

# **Exhibit 5**

## Securities and Exchange Commission v. StraightPath Venture Partners LLC

Page 1

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 SECURITIES AND EXCHANGE COMMISSION,

5 Plaintiff,

6 -against- Case No. 22-Civ-3897

7 STRAIGHTPATH VENTURE PARTNERS LLC,

8 STRAIGHTPATH MANAGEMENT LLC, BRIAN

9 K. MARTINSEN, MICHAEL A. CASTILLERO,

10 FRANCINE A. LANAIA, and ERIC D.

11 LACHOW,

12 Defendants.

13 -----x

14  
15 VIDEOTAPE DEPOSITION OF

16 DOUGLAS J. SMITH

17 VIA ZOOM VIDEOCONFERENCE

18 May 19, 2022

19 10:30 a.m.

20  
21  
22 CASE NO. 5240291

23 Reported by:

24 Maureen Ratto, RPR, CCR

25

1 \* \* \*

2  
3 Videotape deposition of Douglas J.  
4 Smith held virtually via Zoom  
5 Teleconference, hosted from Veritext  
6 Legal Solutions, pursuant to notice,  
7 before Maureen Ratto, Certified Court  
8 Reporter, License No. XI01165,  
9 Registered Professional Reporter,  
10 License No. 817125, and Notary Public.

11  
12 \* \* \*

## Securities and Exchange Commission v. StraightPath Venture Partners LLC

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13 ALSO PRESENT:

14 Brian Martinsen

15 Michael Castillero

16 Francine Lanaia

17 Jim Roberts, Legal Video Specialist

18

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1 VIDEOGRAPHER: Good morning.  
2 We're going on the record at  
3 approximately 10:33 a.m. on May  
4 19th, 2022. Please note that this  
5 deposition is being conducted  
6 virtually. The quality of  
7 recording depends on the quality of  
8 the camera and the internet  
9 connection of the participants.  
10 What is heard from the witness and  
11 seen on screen is what will be  
12 recorded.

13 Audio and video recording will  
14 continue to take place unless all  
15 parties agree to go off the record.

16 This is Media Unit 1 of the  
17 video-recorded deposition of  
18 Douglas J. Smith, taken by counsel  
19 for Defendants in the matter of  
20 Securities and Exchange Commission  
21 versus StraightPath Venture  
22 Partners, LLC, et al filed in the  
23 United States District Court,  
24 Southern District of New York, Case  
25 22-CV-03897.

1 My name is Jim Roberts  
2 representing Veritext Atlanta, I'm  
3 the videographer. The court  
4 reporter is Maureen Ratto, also  
5 with Veritext.

6 I'm not authorized to  
7 administer an oath, I'm not related  
8 to any party in the action and nor  
9 am I financially interested in the  
10 outcome.

11 All counsel consent to this  
12 video arrangement and waive  
13 objections to this manner of  
14 reporting and to the remote  
15 swearing in of the witness.

16 Counsel will please state  
17 their appearances beginning with  
18 noticing counsel.

19 MR. SHERMAN: My name is Scott  
20 Sherman with the law office of  
21 Nelson Mullins. Along with me is  
22 my colleague Josh Lewin also with  
23 Nelson Mullins.

24 MR. GREENWOOD: On behalf of  
25 Plaintiffs Securities and Exchange

1 DOUGLAS J. SMITH

2 Commission, Lee Greenwood and Phil  
3 Fortino, representing the deponent  
4 Doug Smith in his capacity as a SEC  
5 employee.

6 MR. SHERMAN: I'll also state  
7 for the record, my co-counsel Sam  
8 Enzer from the law firm of Cahill  
9 Gordon, is joining this morning.

10 VIDEOGRAPHER: Okay. Will the  
11 court reporter please swear in the  
12 witness.

13 \* \* \*

14 D O U G L A S J. S M I T H, having  
15 been first duly sworn according to law  
16 by the Officer, testifies as follows:

17 DIRECT EXAMINATION BY MR. SHERMAN:

18 Q. Mr. Smith, good morning.

19 A. Good morning.

20 Q. My name is Scott Sherman. I'm  
21 with the law firm of Nelson Mullins in  
22 Atlanta and I represent the Defendants in  
23 this matter.

24 You understand that you are  
25 here subject to a Notice of Deposition in

1 DOUGLAS J. SMITH

2 the case Securities and Exchange  
3 Commission versus StraightPath Venture  
4 Partners, LLC, et al?

5 A. Yes.

6 Q. Okay. And in connection with  
7 this matter you understand that the SEC  
8 has filed a Complaint, correct?

9 A. Yes.

10 Q. Have you read the Complaint?

11 A. Yes.

12 Q. Did you participate in  
13 drafting the Complaint?

14 A. Not -- providing comments and  
15 edits.

16 Q. Okay. We'll get back to all  
17 that in a bit. But kind of high level  
18 with respect to the Complaint, do you  
19 understand they also filed a motion and  
20 memorandum of law in support of the  
21 emergency application for an order to  
22 show cause, temporary restraining order,  
23 preliminary injunction, asset freeze,  
24 receiver and other R E O. \*\*\*

25 Are you familiar with that

1 DOUGLAS J. SMITH

2 filing?

3 A. Yes. I don't remember looking  
4 at those.

5 Q. Okay. So sitting here at the  
6 moment you don't remember -- I'm shorten  
7 it so I don't have to go through the  
8 whole phrase again but the whole  
9 memorandum of law that they -- the SEC  
10 filed?

11 A. No.

12 Q. Do you remember if you --  
13 well, I guess since you don't remember it  
14 I'll still ask this next question which I  
15 think I may know the answer, do you  
16 recall drafting or participating and  
17 providing comments or edits to the  
18 memorandum of law?

19 A. No.

20 Q. Okay. Now, today, are you  
21 under any medical condition or taking any  
22 medications that could affect your  
23 testimony?

24 A. No.

25 Q. Have you ever sat for a

1 DOUGLAS J. SMITH

2 deposition before?

3 A. No.

4 Q. So, welcome. The process is  
5 going to be me asking you a lot of  
6 questions.

7 Now, I attempt to ask  
8 questions that I believe are coherent and  
9 understandable. If, however, you don't  
10 understand them, I want to make sure that  
11 you let me know.

12 During the course of this your  
13 attorney may object and not to instruct  
14 you but just, generally speaking, so you  
15 have a sense, unless you're instructed  
16 not to answer you still have to answer  
17 the question. I generally talk very fast  
18 but I'm going to work to talk very slow  
19 today and I would ask you do the same and  
20 we'll do our best not to talk over each  
21 other so the court reporter can take the  
22 record as best as possible. Okay?

23 A. Yes.

24 Q. Okay. Can you please state  
25 your full name for the record?

## Securities and Exchange Commission v. StraightPath Venture Partners LLC

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1 DOUGLAS J. SMITH

2 A. My name is Douglas J. Smith.

3 Q. And can you please state where  
4 you work?

5 A. I work for the Securities and  
6 Exchange Commission under the Division of  
7 Enforcement.

8 Q. And what is your job?

9 A. My job is staff accountant and  
10 I work on investigations assisting  
11 attorneys on multiple different cases.

12 Q. And prior to getting into your  
13 current job let's walk through a few  
14 things.

15 Where is your current office  
16 located?

17 A. It's 100 Pearl Street and also  
18 teleworking as well.

19 Q. 100 Pearl Street in New York  
20 City, Manhattan, correct?

21 A. Yes.

22 Q. And you telework from home?

23 A. Yes.

24 Q. And where is that?

25 A. It's in Brooklyn.



1 DOUGLAS J. SMITH

2 Q. Okay. I'm going to start with  
3 a brief history on your education.

4 Can you please -- can you  
5 please tell the court your education  
6 history after high school?

7 A. Yup. I went to the American  
8 Musical and Dramatic Academy after high  
9 school and then I went to school at Utica  
10 College in Syracuse University where I  
11 studied criminal justice, economics,  
12 crime investigation with financial  
13 investigation concentration. I graduated  
14 December 2006.

15 Q. Explain what the basis of --  
16 or what the degree was about or what  
17 exactly you were studying, if you can  
18 give a bit more detail for the court?

19 A. Yeah. I studied a variety of  
20 topics on criminal law, criminal justice  
21 issues, economics, intermediate  
22 accounting, about 20 to 30 credit hours  
23 worth of accounting.

24 Q. Okay. And did you take any law  
25 courses while in college?

1 DOUGLAS J. SMITH

2 A. I believe I took one or two,  
3 like an intro kind of class.

4 Q. Do you remember the names of  
5 those?

6 A. I don't.

7 Q. And that was a part of  
8 criminal justice related coursework?

9 A. Yes.

10 Q. Now, as far as your education,  
11 so what was -- if you can just say it  
12 again for the record, the degree that you  
13 ended up with?

14 A. It's criminal justice and it's  
15 economic crime investigations and the  
16 concentration is financial  
17 investigations.

18 Q. Okay. So outside of coursework  
19 on accounting, did you any kind of  
20 certifications course at any point during  
21 school or after?

22 A. I'm a Certified Fraud Examiner  
23 and have been since 2010 or so, I would  
24 say.

25 Q. What did -- sorry. Go ahead. I

1 DOUGLAS J. SMITH

2 apologize.

3 A. That's okay.

4 Q. What did that course entail?  
5 Was it a one-day course? Was it a series  
6 of courses? What was that?

7 A. So there were a series of  
8 modules that you had to take and then you  
9 studied for a test and then you were  
10 certified after that and every year you  
11 have to do 20 credit hours of continuing  
12 education credits, ten of which have to  
13 relate to fraud-related issues or topics.

14 Q. So what type of training or  
15 what type of -- when you say modules,  
16 what kind of training or kind of module  
17 -- what is a module?

18 A. It was so long ago that I  
19 don't remember what exactly it was. It  
20 was sponsored by the Association of  
21 Certified Fraud Examiners, so it was a  
22 curriculum developed by them.

23 Q. And generally speaking, do you  
24 have any recollection as to what you  
25 learned, what type of skills you say you

1 DOUGLAS J. SMITH

2 undertook or received in connection with  
3 this -- these modules and the coursework?

4 MR. GREENWOOD: Objection to  
5 form. You can answer.

6 A. Yeah. I mean, it's keeping up  
7 with current topics in the field where it  
8 relates to fraud and any -- any, you  
9 know, case -- case studies of fraud. It's  
10 just continuing on in the education of  
11 what's going on in the world and staying  
12 up-to-date.

13 Q. So outside of these courses,  
14 any other type of certifications or  
15 training?

16 A. I went to Georgetown Law for a  
17 bit and took some LLM classes that the  
18 SEC provided to staff.

19 Q. What LLM classes did you take?

20 A. I don't remember. It was a  
21 while ago.

22 Q. When did you start with the  
23 SEC?

24 A. In 2007.

25 Q. Was that your first job out of

1 DOUGLAS J. SMITH

2 school?

3 A. No.

4 Q. What was first job out of  
5 school?

6 A. My first job was working for  
7 the New York Mercantile Exchange.

8 Q. What did you do there?

9 A. I did floor supervision and  
10 monitoring the traders, making sure they  
11 were complying with the rules and  
12 regulations of NYMEX.

13 Q. For the court, can you explain  
14 the acronym just to understand?

15 A. Yes. It's New York Mercantile  
16 Exchange, NYMEX.

17 Q. And how long were you there?

18 A. For about three or four  
19 months.

20 Q. Where did you go after that?

21 A. To the Bank of New York  
22 Mellon.

23 Q. And what did you do there?

24 A. There I worked in their  
25 insider trading group and I monitored

1 DOUGLAS J. SMITH

2 people, employees' personal trading and  
3 making sure they weren't on restricted  
4 lists and doing pre-clearances and  
5 everything associated with those  
6 regulations.

7 Q. Any other --

8 MR. SHERMAN: What was that?

9 MR. GREENWOOD: I just told  
10 him to keep his voice up.

11 Q. Any other -- any other  
12 responsibilities while you were at the  
13 Bank of New York Mellon?

14 A. That was it.

15 Q. And how long were you there?

16 A. For about five months or so.

17 Q. And what year was this?

18 A. This was 2007.

19 Q. Okay. And so was your next job  
20 with the SEC?

21 A. Yes.

22 Q. And when you joined the SEC  
23 what was your job?

24 A. I worked for the Office of  
25 Compliance Inspections and Examinations

1 DOUGLAS J. SMITH  
2 as a Securities Compliance Examiner where  
3 we did exams of registered investment  
4 companies, Registered Investment Advisors  
5 and transfer agents.

6 Q. So you went out in the field  
7 and met with funds advisors, et cetera?

8 A. Yes, I did about 50 exams or  
9 so.

10 Q. How long were you in that  
11 position?

12 A. Until 2012.

13 Q. What was your next position?

14 A. My next position was as a  
15 staff accountant in the Division of  
16 Enforcement, is what I do today.

17 Q. And as a staff accountant tell  
18 me what your day-in-day-out job is?

19 A. To review records that come in  
20 pursuant to any kind of requests or  
21 subpoenas, sometimes drafting requests  
22 and taking that information and  
23 scheduling out, you know, what's  
24 happening typically with bank records,  
25 brokerage records, transfer agent

1 DOUGLAS J. SMITH

2 records, phone call records. It's a  
3 variety of different documents, depending  
4 on what type of case it is.

5 Q. So just to clarify your  
6 testimony, so as a general matter, your  
7 job is to take data that comes in, like  
8 bank records, numbers, phone numbers,  
9 cash and schedule it out as directed by  
10 the staff? Is that a fair  
11 characterization of your testimony?

12 A. Yes.

13 Q. Any other role that you  
14 undertake outside of that while you've  
15 been in this position?

16 A. No.

17 Q. Sorry. Can you say that  
18 again?

19 A. No.

20 Q. Now, earlier you testified  
21 that you've never been deposed before,  
22 correct?

23 A. Yes.

24 Q. Have you ever testified in any  
25 case, any type of arbitration, basically



1 DOUGLAS J. SMITH

2 any type of testimony?

3 A. Yes.

4 Q. Can you please tell the court  
5 what cases or where you've testified?

6 A. I filed a declaration for one  
7 case that the SEC brought against David  
8 Craven and a bunch of other entities, it  
9 was a microcap fraud investigation.  
10 Another one was I was a witness in an  
11 Administrative Proceeding and that was  
12 SEC versus Wing Chau, it was a CDO case.

13 Q. So if you can backup on the  
14 first case. So you prepared a declaration  
15 related to a case involving microcap  
16 company, correct?

17 A. I don't know if it was  
18 microcap company or it was individuals  
19 that were participating in microcap  
20 activity.

21 Q. Okay. So how long ago was  
22 that?

23 A. I'm going to say 2014, 2015,  
24 around then.

25 Q. Do you remember what you were

1 DOUGLAS J. SMITH

2 asked to do? I'm not getting into  
3 privileged communications with staff but  
4 do you remember generally what your job  
5 was as far as what you were analyzing in  
6 that case?

7 A. Yes. It was analyzing bank  
8 records, brokerage records, transfer  
9 agent records and it was -- yeah,  
10 scheduling out those records.

11 Q. Okay. And then you prepared a  
12 declaration summarizing or scheduling out  
13 all those records, correct?

14 A. Yes.

15 MR. GREENWOOD: Objection to  
16 form.

17 Q. And you then testified in  
18 court regarding your declaration; is that  
19 right?

20 A. No.

21 Q. Where did you testify?

22 A. That wasn't -- that didn't  
23 involve testimony. The Defendants never  
24 showed up, so it was a default judgment.

25 Q. Okay. So you were prepared to

1 DOUGLAS J. SMITH

2 testify?

3 A. We showed up at court and  
4 before the judge and if I needed to I  
5 would have, yes.

6 Q. Okay. And tell me about the --  
7 a little bit more detail about the other  
8 matter, it sounds like you did testify,  
9 correct, the second matter you mentioned  
10 earlier?

11 A. Yes.

12 Q. So tell the court about that?

13 A. It was an AP proceeding and I  
14 was a summary witness for the SEC  
15 describing certain short positions that a  
16 hedge fund took in a CDO or CDOs.

17 Q. Okay. So just to confirm, when  
18 you say AP, you mean there is an  
19 Administrative Proceeding before an  
20 Administrative Law Judge, correct?

21 A. Yes.

22 Q. And what did you do, did you  
23 prepare a declaration with regard to that  
24 case?

25 A. No.

1 DOUGLAS J. SMITH

2 Q. Did you do any analysis in  
3 that case?

4 A. Yes.

5 Q. And what was that analysis?

6 A. It was to schedule out trading  
7 records from various blotters and to  
8 assemble them into exhibits.

9 Q. Okay. Just to reconfirm, you  
10 do not have a law degree, correct?

11 A. No.

12 Q. You are not a CPA, correct?

13 A. No.

14 Q. Any other -- you talked about  
15 declarations. How many declarations have  
16 you prepared, if there's so many to  
17 count, I don't know, but can you tell the  
18 court how many declarations you've  
19 prepared since joining the SEC?

20 A. This is the second one for  
21 StraightPath.

22 Q. So to confirm, this is the  
23 only one for StraightPath but the second  
24 declaration you've ever prepared,  
25 correct?

1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Okay. And the other one was  
4 the one we mentioned earlier on the  
5 microcap matter, correct?

6 A. Yes.

7 Q. Okay. So just by name, if you  
8 can let us know who you've been speaking  
9 with, generally, not about all what  
10 you've said but just on the SEC, could  
11 you identify everyone from the SEC staff  
12 that you've been working with on the  
13 StraightPath investigation?

14 MR. GREENWOOD: Just, are you  
15 asking him, like, ever on the  
16 StraightPath investigation or right  
17 now?

18 MR. SHERMAN: I'm just trying  
19 to get a list, just names, not  
20 about privileged communications.

21 MR. GREENWOOD: I understand.  
22 I'm trying to understand the  
23 timeframe.

24 MR. SHERMAN: I mean, look --  
25 well, let me ask.

1 DOUGLAS J. SMITH

2 Q. How long have you been  
3 involved with StraightPath, as far as  
4 whether investigation or this lawsuit,  
5 how long generally have you been involved  
6 with the StraightPath matter?

7 A. I was assigned it in late July  
8 and I started working on it -- July 2021  
9 and I started working on it in August  
10 2021.

11 Q. Okay. So after you were  
12 assigned it in July, who assigned it to  
13 you?

14 A. It would have been my boss and  
15 his boss, which is Neil Hendleman and Rob  
16 DeLeonardis.

17 Q. And just since that time have  
18 you had any communications, discussions  
19 with anyone else from the SEC related to  
20 StraightPath?

21 A. No.

22 Q. Well, let me rephrase. You've  
23 obviously spoken with I assume -- I  
24 assume Phil, Lee Greenwood and -- I'm  
25 sorry, Phil, I'm blanking on your last

1 DOUGLAS J. SMITH

2 name -- Phil Fortino, correct?

3 A. Yes.

4 Q. Have you spoken with Meghan  
5 Genet?

6 A. Yes.

7 Q. Anyone else that you've spoken  
8 with that's been involved in  
9 StraightPath?

10 A. Steve Rawlings -- with the SEC  
11 staff you're saying? So Steve Rawlings,  
12 and Tian Wen.

13 Q. Were you involved in any  
14 interviews or speaking with any third  
15 parties related to StraightPath as part  
16 of your investigative work?

17 A. Yes.

18 Q. Do you recall who those people  
19 were?

20 A. I think it was RBC for certain  
21 document productions, and Signature Bank.

22 Q. Okay. And that was in  
23 connection with subpoenas served?

24 MR. GREENWOOD: Objection to  
25 form.

1 DOUGLAS J. SMITH

2 MR. SHERMAN: Let me rephrase.

3 Q. That was in connection with  
4 seeking documents that the SEC was asking  
5 for in connection with their  
6 investigation; is that correct?

7 MR. GREENWOOD: Objection to  
8 form. You can answer.

9 Q. If it's confusing I can ask it  
10 a different way.

11 Why did you call those  
12 entities?

13 A. Great. So we sent document  
14 requests to RBC for records and it was to  
15 talk to them about their document  
16 production. And for Signature Bank it was  
17 to verify the bank balances as of a  
18 specific day in May. I think it's one of  
19 my exhibits to my declaration.

20 Q. Okay. So let me kind of move  
21 off topic but I'll cycle back.

22 So in doing your work you are  
23 aware that you created a declaration that  
24 was signed, there's an electronic  
25 signature May 13, 2022. Do you recall



1 DOUGLAS J. SMITH

2 that declaration that you electronically  
3 signed?

4 A. Yes.

5 Q. And it has I believe nine  
6 exhibits. Do you recall that?

7 A. Yes.

8 Q. Okay. There's ten exhibits. Do  
9 you recall that?

10 A. Yes.

11 Q. So in doing your analysis work  
12 in this matter, since July or August of  
13 2021, did you undertake a review to  
14 identify distributions of stock or cash  
15 to investors?

16 A. I started doing that work --  
17 outside of the bank records, I assume  
18 you're asking, looking at the brokerage  
19 records?

20 Q. I'm asking just, well,  
21 generally and then we can go specific,  
22 but I'm asking generally, did you  
23 undertake that review?

24 A. So as it applied to the bank  
25 records, if there were distributions

1 DOUGLAS J. SMITH  
2 being made to investors I did categorize  
3 those as such and there were cash inflows  
4 to the bank statements from the brokerage  
5 records. So I'm aware of all of that  
6 activity. But as for the brokerage  
7 records, themselves, I did not do much  
8 work at all with looking at the brokerage  
9 records.

10 Q. And why is that?

11 A. I didn't have enough time.  
12 There were about 15,000 rows of bank  
13 records and only one person, me, doing  
14 them. So it was a lot of work.

15 Q. Right. It's a lot of  
16 documents.

17 A. Yes.

18 Q. And so ultimately, looking --  
19 if you had looked at the brokerage  
20 statements, that could show you all sorts  
21 of cash or stock going out to investors,  
22 correct, potentially?

23 MR. GREENWOOD: Objection,  
24 form.

25 A. Yes. It may show cash going

1 DOUGLAS J. SMITH

2 from a brokerage account to another  
3 individual's brokerage account or bank  
4 account, or it could show shares going  
5 from the brokerage accounts to others.

6 Q. How many matters would you  
7 say, when you were working on this, did  
8 you have going on at the same time?

9 A. About five.

10 Q. And just to back up at this  
11 point, so you did identify distributions  
12 of at least cash going out to investors  
13 out of the bank statements, correct?

14 A. Yes.

15 Q. But you weren't able to  
16 identify stock going out or cash from  
17 brokerage accounts because you didn't  
18 have time to review the brokerage account  
19 statements, correct?

20 MR. GREENWOOD: Objection to  
21 form.

22 A. Yes.

23 Q. Did you, as part of your work,  
24 take effort to identify any investment  
25 returns or profit earned by investors?

1 DOUGLAS J. SMITH

2 A. No.

3 Q. And is that because you didn't  
4 have time to review the brokerage  
5 statements?

6 A. Yes.

7 Q. Did you identify any  
8 distributions of any asset to any of the  
9 Defendants from StraightPath after  
10 February 18th, 2022?

11 A. I don't think so, no.

12 Q. And just as far as your  
13 review, as far as you're aware, isn't it  
14 true that the only distributions that  
15 went out as far as stock or cash was to  
16 investors, correct?

17 MR. GREENWOOD: Objection to  
18 form.

19 A. I'm sorry. Could you repeat  
20 the question?

21 Q. Sure. After February 18, 2022  
22 you're aware that there were  
23 distributions of cash -- of stock to  
24 investors, correct?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 MR. SHERMAN: What's the basis  
4 for the objection, to the form, so  
5 I can try to clarify?

6 MR. GREENWOOD: Foundation.  
7 Foundation.

8 Q. Okay. So in reviewing -- we  
9 can circle back on this, but did you  
10 review the declaration of Debbie Chan?

11 A. No.

12 Q. Okay. Do you know who she is?

13 A. Yes.

14 Q. Okay. So was part of your  
15 work, when you did any analysis, was it  
16 to assess whether there was any  
17 distribution of stock or cash outside of  
18 StraightPath after February 18, 2022?

19 A. Yes, from the bank records.

20 Q. Okay. Because you didn't have  
21 time to look at the brokerage, right?

22 Okay. So for February, when  
23 you looked at the bank records did you  
24 see any distributions of cash going to  
25 investors?

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2 A. Yes, I think there was one.

3 It's in --

4 Q. Do you remember -- okay. I  
5 apologize. What did you say?

6 A. It's in my declaration  
7 somewhere, I think.

8 Q. So with your analysis you  
9 identified the StraightPath -- and by the  
10 way, just for clarity, I'll use it kind  
11 of collectively, I know there's different  
12 definitions between the SEC's documents  
13 and ours and all, but just for purposes  
14 of StraightPath, I'll just say  
15 collectively between StraightPath Venture  
16 Partners or StraightPath Management or  
17 StraightPath Holdings or the StraightPath  
18 Funds, for ease, unless I separately  
19 distinguish it I'm just going to use the  
20 term "StraightPath" for ease during this  
21 questioning. Is that okay?

22 A. Yes.

23 MR. GREENWOOD: Are you  
24 referring to StraightPath as only  
25 referring to entities or

1 DOUGLAS J. SMITH

2 individuals? I just want to be  
3 sure.

4 MR. SHERMAN: What I'll do is  
5 I'll identify for -- I'll identify  
6 individual names or the individual  
7 Defendants collectively and then  
8 for StraightPath will solely be as  
9 to the corporation or funds which  
10 could be company or corporation.

11 MR. GREENWOOD: Got it. Thank  
12 you.

13 Q. You identified as part of your  
14 work that StraightPath did buy stock,  
15 correct?

16 A. Yes.

17 Q. And as we just discussed, you  
18 identified that -- well, through the  
19 work, did any of your work involve the  
20 fact that StraightPath distributed stock  
21 to investors?

22 A. You know, again, I did not  
23 look too much into the brokerage records  
24 to make those kind of, like, you know,  
25 summaries or scheduling it out. You know,

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2 I solely concentrated on the bank  
3 records.

4 Q. Do you know if anyone from the  
5 SEC took effort to identify and analyze  
6 profits or investment returns earned by  
7 investors?

8 MR. GREENWOOD: Just to be  
9 clear, that's a "yes" or "no"  
10 question. As we're going to be  
11 asking questions about internal  
12 discussions we're going to instruct  
13 you not to answer concerning  
14 internal discussions. But he's  
15 asking a "yes" or "no" question  
16 about whether, in substance, what  
17 he just said I just want to be  
18 clear on that.

19 Q. Look, just to be very clear,  
20 I'm not asking you for privileged  
21 communications between staff and you. I'm  
22 just asking, you know, are you aware  
23 whether anyone from the SEC conducted an  
24 analysis identifying profits or  
25 investment returns earned by investors



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2 that invested in StraightPath?

3 A. No.

4 Q. Are you aware of anyone that  
5 identified or took effort to identify  
6 stock distributed by StraightPath to  
7 investors?

8 A. No.

9 Q. Now, you have observed through  
10 your work that StraightPath has somewhere  
11 around, if not more than, 200 million in  
12 stock assets, correct?

13 A. Yes.

14 Q. Okay. And you speak of that --  
15 we can look at it later, but Exhibit 10,  
16 which is, as I noted earlier nine, there  
17 are ten exhibits, and Exhibit 10 is a  
18 summary of purchases of pre-IPO shares.  
19 Do you remember that exhibit?

20 A. Yes.

21 Q. Okay. So I want to go to --  
22 just talk briefly about your declaration  
23 and the exhibits.

24 Now, attached to your  
25 declaration are those ten exhibits that

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2 contain either analyses or calculation or  
3 a summary of certain information,  
4 correct?

5 A. Yes.

6 Q. What analyses or calculations  
7 did you perform during your investigation  
8 -- during the investigation or since the  
9 lawsuit that are not referenced in the  
10 declaration or attached as exhibits?

11 A. Could you repeat the question?

12 Q. So another way of saying it  
13 is, I want to know what type of  
14 calculations you did -- we'll break it  
15 up -- that were not included in the  
16 declaration or the exhibits?

17 A. I guess one would be to take  
18 in the money that's coming in from the  
19 brokerage accounts and then deduct the  
20 amounts that's going for cash  
21 distributions in the bank accounts and  
22 then deducting against people that used  
23 their IPO proceeds from one issuer to  
24 invest in another pre-IPO company, so the  
25 net remaining amount is what I did and I

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2 think it's around, like, \$10 million or  
3 so, \$10 million or less.

4 Q. What's your understanding of  
5 what that roughly \$10 million number is?

6 A. I don't know.

7 Q. So did you have an opportunity  
8 to -- let me ask you this; when you were  
9 kind of working through your analyses and  
10 documents, did you kind of organize the  
11 documents that you were reviewing in any  
12 way to kind of keep track of what you  
13 were looking at?

14 A. Yes.

15 Q. And do you have a file of  
16 those documents?

17 A. Yes. I used Excel.

18 Q. Okay. Now, Excel is what you  
19 would use to input data, correct?

20 A. Yes.

21 Q. But as far as the supporting  
22 documents, how did you kind of manage all  
23 that paper or pdf's to keep track of what  
24 you were looking at?

25 A. So I have multiple categories

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2 within Excel and keeping track of when  
3 entering and categorizing all of the bank  
4 records, inflows and outflows, and  
5 entering it into Excel.

6 Q. But the actual backup  
7 documents, themselves, once when you were  
8 using them did you kind of store them in  
9 a particular space on your computer or  
10 something like that?

11 A. No. They're in our repository,  
12 which is called Recomind. So when  
13 people make document productions they're  
14 stored in that system and that's where we  
15 go to access the documents.

16 Q. Okay. So how do you keep track  
17 of -- if you've looked at a particular  
18 document -- let me say it a different  
19 way.

20 As you're going through your  
21 analysis and there's hundreds, if not  
22 thousands of documents, how do you keep  
23 track of what you've looked at and what  
24 you haven't?

25 A. I guess I don't think about it

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2 in that way. You know, when you see  
3 inflows and outflows you need to account  
4 for what's coming in and what's going out  
5 and once I do do that I make the notation  
6 in Excel and I move on to the next row.

7 Q. Okay. So the analysis you just  
8 referred to, where you think there was a  
9 number of around 10 million, you weren't  
10 sure what it was, did you -- was that on  
11 an Excel spreadsheet?

12 A. Yes. They're based on pivot  
13 tables, based on the data that I'm  
14 entering.

15 Q. And that was not included in  
16 your report or exhibits -- your  
17 declaration or exhibits, correct?

18 A. No.

19 Q. And do you know if that Excel  
20 was produced in this case to us?

21 A. No.

22 Q. Without going into whether the  
23 privileged communications of you and the  
24 staff and collecting documents, are you  
25 aware that there was a document request

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2 served for all of your documents used and  
3 records related to your analysis  
4 including your declaration and exhibits?

5 A. Yes.

6 Q. Did you collect such documents  
7 to be produced?

8 A. No.

9 Q. So sitting here today, you  
10 have no idea whether that Excel document  
11 was produced or not?

12 MR. GREENWOOD: Objection to  
13 form.

14 Q. Sorry. The Excel -- let me  
15 rephrase. The Excel that we're talking  
16 about with this other analysis, that's  
17 not in your declaration, you have no idea  
18 whether that Excel was produced?

19 A. No.

20 Q. Did you conduct any profit and  
21 loss analysis or calculations for the  
22 funds?

23 A. No.

24 Q. Did you conduct any profit or  
25 loss analysis or calculations for the

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2 investors?

3 A. No.

4 Q. Did you conduct any analysis  
5 of the surplus or deficit of stock in the  
6 remaining pre-IPO stock where you did not  
7 identify a perceived shortfall?

8 A. Yes, I did them for all.

9 Q. And are you aware whether or  
10 not those were -- that information was  
11 produced to us?

12 A. No.

13 Q. Okay. Are you aware -- just to  
14 backup for a second.

15 Are you aware of anyone else  
16 at the SEC, anyone at the SEC that did  
17 conduct a profit and loss analysis or  
18 calculations for the funds?

19 A. No.

20 Q. Are you aware of anyone at the  
21 SEC that conducted a profit and loss  
22 analysis of calculations for the  
23 investors?

24 A. No.

25 Q. Did you conduct an analysis

1 DOUGLAS J. SMITH

2 related to any fees or profits earned by  
3 StraightPath?

4 A. Yes.

5 Q. And is that in your exhibits  
6 and declaration?

7 A. Yes.

8 Q. In which exhibit?

9 A. I would have to look at them.

10 Q. So you conducted -- so in your  
11 analysis, just to confirm, you did an  
12 analysis of all carried interest that  
13 StraightPath earned in stock that sits  
14 with StraightPath currently showing the  
15 carried interest?

16 MR. GREENWOOD: Objection to  
17 form.

18 Q. Well, let me ask you this,  
19 when I say -- let's backup.

20 I asked you; did you conduct  
21 an analysis related to the fees and  
22 profits errands by StraightPath, do you  
23 remember that question?

24 A. Yes.

25 Q. And you said you did, correct?



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2 A. Yes. Between what they're  
3 selling to third parties for the shares  
4 versus what they're selling to investors  
5 at a higher price, the difference between  
6 that results in what they're collecting  
7 in revenue.

8 Q. Okay. So your view is that and  
9 understanding is that StraightPath made a  
10 profit if they -- if there was a markup?

11 A. Yes.

12 Q. Okay. And outside of markups,  
13 did you assess any other fees or profits  
14 earned by StraightPath?

15 A. No.

16 Q. Okay. Do you know in anyone  
17 else at the SEC did that kind of  
18 analysis?

19 A. No.

20 Q. Did you conduct any analysis  
21 comparing the market or available prices  
22 of the pre-IPO stock from other sources  
23 with the price offered by StraightPath at  
24 any point in time?

25 A. No.

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2 Q. Do you know if anyone else  
3 from the SEC did that kind of analysis?

4 A. No.

5 Q. Did you conduct an analysis  
6 comparing StraightPath's use of funds and  
7 bank accounts with any fees that they  
8 have actually earned?

9 A. I don't understand the  
10 question.

11 Q. Okay. So do you understand  
12 that StraightPath had, pursuant to the  
13 PPM, had the right to charge various  
14 fees, correct?

15 MR. GREENWOOD: Objection to  
16 form.

17 Q. Okay. Have you reviewed the  
18 PPM in this case?

19 A. Not in detail.

20 Q. Okay. So when I say PPM do you  
21 understand it's the Private Placement  
22 Memorandum?

23 A. Yes.

24 Q. Okay. So in doing your  
25 analysis to understand what could be

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2 profit or money that StraightPath earned,  
3 you didn't look at the -- did you ever  
4 look at the PPM to understand what fees  
5 and other types of profits they could  
6 earn as disclosed to investors?

7 A. No.

8 Q. Okay. Did you assess as part  
9 of your work on markups the expenses of  
10 third parties that StraightPath would  
11 have to pay in connection with purchasing  
12 stock?

13 MR. GREENWOOD: Objection to  
14 form.

15 Q. Let me ask you; are you aware  
16 that StraightPath had fees -- sorry --  
17 expenses in purchasing stock?

18 A. Yes.

19 Q. And what's your understanding  
20 of what those expenses would be?

21 A. That they would be brokerage  
22 fees paid to someone who's brokering the  
23 transaction of the seller and  
24 StraightPath being the buyer.

25 Q. And did you undertake an

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2 analysis of all the fees that would be  
3 earned -- sorry -- all the fees that  
4 would have to be incurred for purchasing  
5 each stock purchase that StraightPath  
6 undertook?

7 MR. GREENWOOD: Objection to  
8 form.

9 Q. Let me rephrase. Did you  
10 undertake a review of all the fees by  
11 stock?

12 A. Yes.

13 Q. Okay. Where is that in your  
14 analysis?

15 A. It's in my Excel work product  
16 document.

17 Q. Are you talking about in the  
18 markups?

19 A. You're asking about brokerage  
20 fees being deducted from what they're  
21 sending to third parties to purchase  
22 shares?

23 Q. Yeah. There's brokerage --  
24 let's back up.

25 So there's brokerage fees,

1 DOUGLAS J. SMITH

2 there are fees from finders, which is a  
3 separate issue in connection with the  
4 sale of interest in the fund. You  
5 understand that, correct?

6 A. Yes.

7 Q. Then on the purchase side  
8 there is fees that StraightPath has to  
9 pay out when they're trying to find  
10 stock, correct?

11 A. Okay.

12 Q. Do you understand that point  
13 that StraightPath has to go out on the  
14 purchase side and that there can be fees  
15 from brokers or transfer fees or other  
16 types of fees that StraightPath will have  
17 to pay out when it looks to purchase  
18 stock?

19 A. Yeah. I think we're talking  
20 about the same thing.

21 Q. So I'm trying to understand in  
22 your exhibit which exhibit you utilized  
23 and did an analysis of all the fees that  
24 StraightPath paid out to when it  
25 purchased stock?

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2 A. Yes. I would have to look at  
3 my exhibits but anything that I presented  
4 would be deducting those fees.

5 Q. Let me ask you this; in  
6 connection with markups did you do an  
7 analysis of what -- of what portion of  
8 any markup ultimately went out to these  
9 third parties to pay expenses and what  
10 portions StraightPath kept, if any?

11 A. There were a few instances  
12 where StraightPath kept fees for itself,  
13 that it was refunded by other brokers.

14 Q. Well, let's focus on the  
15 question, though.

16 The question is, you have a  
17 section of your analysis that talks about  
18 markups, correct?

19 A. Yes.

20 Q. But to confirm, nowhere in  
21 that analysis of the markup does -- the  
22 markup analysis did you conduct an  
23 analysis showing how much of that markup  
24 would have to be paid out to third  
25 parties for their expenses, correct?

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2 MR. GREENWOOD: Objection to  
3 form. You can answer.

4 A. Yes, I did. It's accounted in  
5 that analysis. It's subtracted out so in  
6 no way in any of my exhibits, looking at  
7 markups have, you know, assessed the  
8 fees, they're subtracted from everything.  
9 So the money going out for specific  
10 shares at a dollar price is matching up  
11 without deducting the fees.

12 Q. So just to kind of round this  
13 out, on the markups do you understand  
14 that portion, if not all, of the markups  
15 could or were used to pay these  
16 third-party expenses, correct?

17 MR. GREENWOOD: Objection to  
18 form. It's compound. You've asked  
19 three different questions.

20 Q. Hold on. Multiple question?

21 Just to understand, you  
22 understand that with -- do you understand  
23 that the markups, where there was money  
24 above what was that StraightPath  
25 purchased the stock for, that the markups

1 DOUGLAS J. SMITH

2 were used -- those dollars were used to  
3 pay for fees to purchase stock? Do you  
4 understand that?

5 A. Yes.

6 Q. And with respect to your  
7 calculation, you're saying your  
8 calculation shows basically if there was  
9 a markup of X dollars, you're subtracting  
10 from the markup how much StraightPath  
11 actually kept of the markup?

12 A. So the fees don't get into the  
13 calculations, you know, at all. I'm  
14 already subtracting the fees before I  
15 begin the markup analysis. So the fees  
16 don't come into play at all in my  
17 analysis.

18 Q. Okay. We can circle back on  
19 that and move on.

20 So, and just getting back to  
21 kind of your role and what you were  
22 doing, so from roughly August, July,  
23 August of 2021 you were involved with  
24 preparation with this case, correct?

25 A. Yes. In August I began.



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2 Q. And what were you doing?

3 A. I was told to do bank record  
4 analysis, and so I focused solely on  
5 that.

6 Q. Okay. So from the beginning of  
7 your analysis you were asked and your  
8 role was to assess bank records and  
9 review them, correct?

10 A. Yes.

11 Q. And you were never asked to  
12 review brokerage records or were you?

13 A. Yes. That was part of the job  
14 as well.

15 Q. We won't go ad nauseam on  
16 this, but you never got to them because  
17 of the time?

18 A. Absolutely.

19 Q. Anything outside of brokerage  
20 records and bank records -- sorry -- as  
21 far as the categories of things that you  
22 were tasked to look at?

23 A. No.

24 Q. Okay. Now, let's -- just  
25 looking at the declaration, we can kind

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2 of pull this up if you want to kind of  
3 present it, Josh.

4 MR. GREENWOOD: I think he has  
5 a printed out copy in front of him.  
6 If you're okay with it, he can  
7 refer to it otherwise.

8 MR. SHERMAN: That's fine.  
9 It's only for convenience to pull  
10 up.

11 MR. LEWIN: Do you want me to  
12 mark it?

13 MR. SHERMAN: Let's mark it,  
14 is that Exhibit 2 or 1?

15 MR. LEWIN: It will be 1.

16 MR. SHERMAN: Okay. Thanks,  
17 Josh.

18 (Defendant's Exhibit 1,  
19 Declaration and exhibits of Douglas  
20 J. Smith, was received and marked  
21 on this date for identification.)

22 Q. So you have your declaration  
23 in front of you, correct?

24 A. Yes.

25 Q. Now, were you provided this

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2 draft declaration -- sorry -- were you  
3 provided a draft declaration for your  
4 review that someone else prepared?

5 MR. GREENWOOD: Objection to  
6 form.

7 Q. Let me ask a different  
8 question. Did you prepare this  
9 declaration?

10 A. Everything, all the data in  
11 the declaration is work that I worked on  
12 and it was drafted by attorneys at the  
13 SEC and I reviewed it, I submitted  
14 comments, edits, it was updated and the  
15 final version I signed.

16 Q. Okay. So just to confirm, you  
17 had by that point or prior to the  
18 declaration being prepared you had  
19 provided data to the staff regarding the  
20 bank record review you had done, correct?

21 A. Yes.

22 Q. Was there any other data  
23 outside the bank record review that you  
24 provided to the staff at that time?

25 A. Not that I can recall.

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2 Q. Okay. Just to confirm, then  
3 you received a draft of this declaration  
4 for you to review?

5 A. Yes.

6 Q. And with respect to edits, do  
7 you recall what areas or what types of  
8 edits you were making?

9 A. If something was wrong I would  
10 point it out and it would be changed, you  
11 know, grammatical errors, it could be a  
12 variety of different things.

13 Q. Okay. So but outside of  
14 grammar, was the focus of edits the  
15 numbers for you or was there something  
16 else?

17 MR. GREENWOOD: Objection to  
18 form.

19 A. No.

20 Q. What was the focus of the  
21 edits?

22 A. So it was describing what was  
23 actually occurring in the bank statement.

24 Q. Okay. So let's go to page 2,  
25 paragraph 5. So this document says

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2 specifically -- sorry, paragraph 5,  
3 "Specifically, I have relied on the  
4 following categories of documents." The  
5 first is bank records for SP Fund  
6 Manager, which is StraightPath Venture  
7 Partners, SP Adviser was the StraightPath  
8 Management and SP Funds, which is  
9 StraightPath Funds 1 through 9 and other  
10 StraightPath-related entities. Do you  
11 see that?

12 A. Yes.

13 Q. So can you please identify, if  
14 you remember, I think you said that there  
15 were bank records -- let me strike that.

16 As I recall, when you  
17 testified earlier, you looked at bank  
18 records for Signature Bank, correct?

19 A. Yes, as well as JPMorgan.

20 Q. Okay. So when you are talking  
21 about bank records, are those the bank  
22 records you are talking about for those  
23 entities related to those two financial  
24 institutions?

25 A. Yes.

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2 Q. Okay. Were there any bank  
3 records that you weren't able to obtain  
4 as part of your search -- sorry -- as  
5 part of your analysis?

6 A. I think the May -- whatever  
7 happened in May of 2022.

8 Q. So outside of the current  
9 month, which is May of 2022, you were  
10 able to access all bank records for these  
11 StraightPath entities for your analysis?

12 MR. GREENWOOD: Objection to  
13 form.

14 A. Yes.

15 Q. Do you believe there is any  
16 records of any sort that would have made  
17 your findings more complete?

18 A. No.

19 Q. Okay. When you say "other  
20 StraightPath-related entities", can you  
21 tell me who those are?

22 A. I think it's StraightPath  
23 Management LLC. It's another StraightPath  
24 entity that's not specifically mentioned.

25 Q. So just to backup, so we're on

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2 the same page because, again, there's  
3 different definitions for everything.  
4 StraightPath's Fund Manager is, for the  
5 record, StraightPath Venture Partners, as  
6 I understand the definition? Do you  
7 understand it that way?

8 A. Yes.

9 Q. So StraightPath Adviser is  
10 StraightPath's Management; do you  
11 understand it that way?

12 A. Yes.

13 Q. And then obviously  
14 StraightPath, or SP Funds or Funds 1  
15 through 9; do you see it that way?

16 A. Yes.

17 Q. So I want to understand when  
18 you say "other StraightPath-related  
19 entities", can you name those?

20 A. There's one more StraightPath  
21 entity that I don't know the full name  
22 of.

23 Q. StraightPath Holdings?

24 A. Yes.

25 Q. Now, next one says "bank

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2 records for other entities controlled by  
3 Martinsen, Castillero, Lanaia or Lachow."  
4 Do you see that under (b) of paragraph 5?

5 A. Yes.

6 Q. Okay. Now, what bank records,  
7 which bank financial institution are we  
8 referring to when we say "bank records"?

9 A. I'm not sure of the specific  
10 institution, but I looked at if they  
11 made, you know, payments into these  
12 StraightPath bank accounts or money was  
13 being paid to them, that was the context  
14 of what I was looking at.

15 Q. And what document did you look  
16 at to determine whether certain funds  
17 were put into a bank account by  
18 Martinsen, Castillero, Lanaia or Lachow?

19 A. I don't understand the  
20 question.

21 Q. So you just testified that you  
22 looked -- it sounded like something where  
23 you saw a reference to a financial  
24 institution where money went to one of  
25 these individuals, did I say that right,



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2 as far as your prior testimony?

3 A. Yes. It was when -- I focused  
4 primarily on if they were sending funds  
5 to StraightPath bank accounts and if the  
6 StraightPath bank accounts were sending  
7 the funds back, I think there were two  
8 instances where they, you know, sent  
9 their own funds to StraightPath and then  
10 StraightPath sent the fund right back,  
11 and that was primarily what I was looking  
12 at.

13 Q. And to confirm, did you ever  
14 look at the Quickbooks of StraightPath?

15 A. Yes.

16 Q. Okay. So were you relying on  
17 Quickbooks or StraightPath bank records  
18 to figure out these bank records for  
19 other entities?

20 A. StraightPath's bank records,  
21 the Quickbooks records were incomplete, I  
22 think we're still waiting on Quickbook  
23 records for Funds 7 through 9 and there  
24 is no profit and loss or anything like  
25 that associated with the funds.

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2 Q. Okay. So (c) says, "Various  
3 books and records of Defendants that they  
4 produced to the Commission during its  
5 investigation, including internal  
6 tracking spreadsheets, welcome letters  
7 and other documents related to sales of  
8 series interests in investors." So let's  
9 break that down a bit.

10 When it says "various books  
11 and records", can you give me some sense  
12 of what you meant by what those books and  
13 records were?

14 A. StraightPath produced various  
15 investor lists for each pre-IPO company;  
16 how many shares an investor invested in;  
17 at what price and if there were fees paid  
18 out to a third party for it; they had  
19 internal tracking inventory, Excel  
20 spreadsheets that were only started  
21 around 2021; and going forward and for  
22 some of the pre-IPO companies they didn't  
23 exist; I looked at welcome letters,  
24 welcome letters were sent to investors  
25 that detailed the shares and the share

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2 price that they were purchasing; and also  
3 the Quickbooks records, when they  
4 identified an investor coming in  
5 sometimes it said the share price or the  
6 share amount; sometimes I would search  
7 for the investor and find either emails  
8 or text messages that said how many  
9 shares the investor bought and at what  
10 price.

11 Q. And as you just testified, you  
12 understood in reviewing records that the  
13 Quickbooks were not fully reconciled,  
14 correct?

15 A. I don't know what kind of  
16 reconciliation was done on the Quickbooks  
17 record.

18 Q. Let me kind of repeat or  
19 restate your testimony. You said when I  
20 mentioned; did you look at Quickbooks,  
21 you said that you understood that certain  
22 Quickbooks records were not fully  
23 reconciled, correct?

24 A. We were only given general  
25 ledgers, we weren't given more detailed

1 DOUGLAS J. SMITH

2 accounting records from Quickbooks.

3 MR. GREENWOOD: He's asking  
4 about the reconciliation point. On  
5 that I'm objecting to form but you  
6 should answer the question.

7 MR. SHERMAN: I'm just trying  
8 to understand your answer.

9 Q. You testified earlier about  
10 certain funds were not reconciled. I'm  
11 just trying to make clear the testimony.

12 A. So we weren't given certain  
13 Quickbooks for Funds 7 through 9 for a  
14 certain time period. So we were not given  
15 complete Quickbooks records.

16 Q. And you said that certain  
17 other Quickbooks types of reports could  
18 have been useful to you; is that correct?

19 A. Yes.

20 Q. Such as what?

21 A. Profit and loss statement, a  
22 balance sheet.

23 Q. Are you aware whether or not  
24 the SEC staff asked for those specific  
25 records during the course of their

1 DOUGLAS J. SMITH

2 investigation?

3 A. Yes, I think we did.

4 Q. And you say you think you did.

5 Were you part of the discussions asking  
6 for them?

7 MR. GREENWOOD: Hold on. Let  
8 me just instruct you not to answer  
9 to the extent the question calls  
10 for discussions between yourself  
11 and SEC staff, that's attorney work  
12 product and we're instructing you  
13 not to answer.

14 Q. Just to be very clear, so we  
15 don't have to waste time, I'll ask --  
16 I'll never ask you for privileged  
17 communications between you and the SEC  
18 staff.

19 MR. GREENWOOD: That's fine.  
20 I'm instructing him not to answer  
21 to the extent that the question  
22 calls for a discussion of such  
23 privileged conversation.

24 MR. SHERMAN: I get it.

25 Q. My question was; were you ever

1 DOUGLAS J. SMITH

2 a part of any discussion with  
3 StraightPath asking for those specific  
4 records?

5 A. I don't recall.

6 Q. You don't recall if you were?

7 A. I know that -- I know that I  
8 asked for them internally --

9 MR. GREENWOOD: Hold on.

10 MR. SHERMAN: I don't want  
11 you --

12 MR. GREENWOOD: I'll caution  
13 the witness, we're not going to get  
14 into discussions internally --

15 MR. SHERMAN: That's fine.

16 MR. GREENWOOD: -- even if it  
17 may be related to the topic. So  
18 I'm just going to instruct you not  
19 to answer to the extent that the  
20 question calls for you to reveal  
21 attorney work product discussions  
22 internally.

23 Q. Yes. So you don't recall if  
24 you were ever on any communication with  
25 any StraightPath person or entity asking

1 DOUGLAS J. SMITH

2 for these specific records, correct?

3 A. No.

4 Q. Do you ever recall seeing a  
5 communication going to any StraightPath  
6 entity asking, during the course of the  
7 investigation, for those specific  
8 records?

9 A. I don't remember.

10 Q. And were you aware that  
11 StraightPath had informed the SEC up  
12 until -- so let me strike that.

13 You're aware that -- are you  
14 aware that StraightPath, during the  
15 course of the investigation, even as late  
16 as May, was speaking with the SEC about  
17 finalizing the reconciliation of  
18 Quickbooks? Were you aware of that fact?

19 MR. GREENWOOD: Objection to  
20 form.

21 A. No.

22 Q. Okay. So subsection (e) of  
23 paragraph 5 says "email correspondence  
24 produced by both Defendants and third  
25 parties."

1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Tell the court what -- you  
4 know, what kind of work you did in  
5 reviewing emails; like, how many emails,  
6 whose emails, et cetera?

7 A. I don't know how many I looked  
8 at. I just did searches for what was  
9 coming in and out of the bank accounts  
10 and trying to identify what they  
11 represented.

12 Q. Did you run search terms to  
13 try to find, like, emails specific to  
14 bank information?

15 A. Yes.

16 Q. And that was the scope of your  
17 email review?

18 A. Yes.

19 Q. Okay. Did you save those  
20 emails at any point as far as which ones  
21 you looked at?

22 A. No.

23 Q. You didn't separately  
24 segregate them, you just reviewed them as  
25 kind of you went --



1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Okay. Now, it says text  
4 messages produced by and involving  
5 Defendants, which is subsection (f). Can  
6 you explain for the court kind of what  
7 you're -- what the scope of your text  
8 message review was?

9 A. Just the same thing, if I  
10 needed to find information pertaining to  
11 the bank records I would run search terms  
12 and those would pop up.

13 Q. And then information  
14 concerning the registration histories of  
15 Defendants on FINRA's WebCRD and  
16 BrokerCheck.

17 Just to confirm, break that  
18 down, so you went online -- did you go  
19 online and look at each of the  
20 individual's BrokerTech reports?

21 A. Yes.

22 Q. And then on FINRA's WebCRD,  
23 did you go through some system to check  
24 each individual's WedCRD?

25 A. Yes.

1 DOUGLAS J. SMITH

2 Q. What else did you look at  
3 regarding the registration history?

4 A. I think employment, you know,  
5 time periods, like series exams that they  
6 took.

7 Q. It says -- (h) says "other  
8 publicly available information." Do you  
9 see that?

10 A. Yes.

11 Q. Can you tell the court what  
12 that refers to, what records?

13 A. Nothing is coming to mind  
14 right now.

15 Q. Okay. So there may not be any  
16 other records?

17 MR. GREENWOOD: Objection to  
18 form.

19 A. I don't know.

20 Q. Did you -- was that -- do you  
21 recall writing this part about (h) of  
22 other publicly available information?

23 A. No, but I did review it.

24 Q. So do you feel at this point  
25 it's inaccurate because there are no

1 DOUGLAS J. SMITH

2 other publicly available information?

3 A. Not necessarily, no.

4 Q. So just to confirm, this was  
5 submitted on May 13th, and so just a few  
6 days ago, and sitting here today, you  
7 have no idea what you mean by "other  
8 publicly available information"?

9 MR. GREENWOOD: Objection to  
10 form.

11 A. Nothing to coming to mind  
12 right now.

13 Q. Are there any other documents  
14 that you did not have when making your  
15 analysis which you believe, sitting here  
16 today, would more accurately help with  
17 your conclusions in your declaration?

18 A. Yes.

19 Q. What would that be?

20 A. So there are 17 million of  
21 investor funds that came into the bank  
22 records that I don't know what shares  
23 they purchased, at what price and how  
24 many shares.

25 Q. Is that because you didn't

1 DOUGLAS J. SMITH

2 have time to assess that?

3 A. No. It's because it was never  
4 produced.

5 Q. What was never produced?

6 A. The specific shares and the  
7 price that the investor was paying --  
8 sending funds to StraightPath for.

9 Q. Is there a spreadsheet or  
10 analysis that you did calculating the 17  
11 million?

12 A. Yes.

13 Q. Okay. So which stocks are we  
14 talking about?

15 A. I don't know. I just see  
16 incoming funds from investors and I don't  
17 know what they purchased.

18 Q. Okay. Are you aware of any  
19 communication to StraightPath asking for  
20 that specific backup support for -- so  
21 you can complete your analysis?

22 A. Yes. I remember these coming  
23 up in multiple different document  
24 requests and productions since I joined  
25 the team.

1 DOUGLAS J. SMITH

2 Q. And are you familiar with the  
3 fact that StraightPath was still in the  
4 process and working with the SEC in  
5 producing documents when this TRO brief  
6 was filed?

7 MR. GREENWOOD: Objection to  
8 form.

9 A. We've been asking for these  
10 documents since before I joined, I  
11 understand --

12 MR. GREENWOOD: Hold on. Let  
13 me just -- Mr. Smith, let me  
14 caution you not to reveal  
15 conversations internally.  
16 Mr. Sherman is only asking about  
17 conversations with third parties of  
18 which you're aware or you've seen  
19 documents.

20 Q. Okay. Are you aware of the  
21 fact that StraightPath had not completed  
22 -- had not completed its production of  
23 documents but was working to produce more  
24 documents at the time in May, say, 13th?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 A. I don't know.

4 Q. So let me ask more broadly,  
5 you have no idea sitting here today, what  
6 the status of StraightPath's efforts to  
7 produce documents prior to the filing of  
8 the current Complaint, correct?

9 A. I don't know.

10 Q. Okay. Are you familiar with  
11 what a K-1 is?

12 A. Generally, yes.

13 Q. What's your understanding?

14 A. That there are tax documents  
15 that assess value of what people are  
16 holding in certain investments.

17 Q. So a K-1, do you understand,  
18 can show a profit or a loss on particular  
19 investments?

20 MR. GREENWOOD: Objection to  
21 form.

22 Q. Well, do you understand that a  
23 K-1 -- let me just rephrase it -- that a  
24 K-1 can show whether an individual  
25 investor has a profit and loss on the

1 DOUGLAS J. SMITH

2 investment subject to the K-1?

3 A. Generally, yes --

4 Q. Okay.

5 A. -- I understand that.

6 Q. Now, are you aware -- let me  
7 ask you to -- kind of looking at the  
8 information and understanding, you know,  
9 for business tax returns, as part of your  
10 practice or your work at the SEC have you  
11 looked at business tax returns?

12 A. No. I mean, very minimally do  
13 I ever look at tax records.

14 Q. Okay. So as part of your work  
15 would you think it important to look at  
16 documents that may help show profits  
17 earned by investors in the StraightPath  
18 funds?

19 A. The K-1s are just going to  
20 give a number, they're not going to give  
21 the underlying detail of what came with  
22 that profit and loss, so I would not look  
23 at the K-1 for that.

24 Q. So you would want to look at  
25 documents maybe produced by the CPA that

1 DOUGLAS J. SMITH

2 shows, like, the information that goes  
3 into the K-1?

4 A. I would want to look at  
5 Quickbooks records, like a balance sheet,  
6 like a profit and loss.

7 Q. Okay. But underlying documents  
8 can also be helpful, correct?

9 A. Everything would be helpful.

10 Q. So are you familiar -- were  
11 you aware that in the fall of 2021  
12 StraightPath's accountant, CPA Tom Pirro,  
13 produced all the tax returns, including  
14 K-1s up to that point?

15 A. I didn't know that he produced  
16 them.

17 Q. So I assume that -- I guess I  
18 can assume that you didn't take, as part  
19 of your review, an effort to review any  
20 of the tax returns or K-1s, correct?

21 MR. GREENWOOD: Objection to  
22 form.

23 A. No. I'd start with the general  
24 ledgers and the balance sheet and the  
25 profit and loss and then I go from there



1 DOUGLAS J. SMITH

2 and they weren't there. So I find no  
3 reason why I would go to the K-1s.

4 Q. So you start with the general  
5 ledgers as part of it, correct?

6 A. Yes.

7 Q. And you understand that  
8 general ledgers were produced prior to  
9 your involvement with this investigation?

10 A. There were multiple entries in  
11 the bank statements that weren't on the  
12 general ledgers. So even -- you know,  
13 there weren't -- they weren't accounting  
14 for everything that were in the bank  
15 statements.

16 Q. And you understand that as we  
17 discussed earlier, StraightPath was and  
18 still has been in the process of  
19 reconciling their Quickbooks, correct?

20 MR. GREENWOOD: Objection to  
21 the form.

22 A. I don't know.

23 Q. Now, to your knowledge, has  
24 the SEC produced all the documents that  
25 you relied upon for your declaration?

1 DOUGLAS J. SMITH

2 MR. GREENWOOD: Objection to  
3 form.

4 Q. Let's back up. Do you know the  
5 SEC made a production to StraightPath in  
6 response to a document request for all  
7 your backup documents related to your  
8 declaration?

9 A. I have not -- I don't know.

10 Q. Okay. So you have no idea what  
11 they produced to us?

12 A. I don't know.

13 Q. Okay. Now, in paragraph 6 of  
14 the declaration, if you look at that, you  
15 reference that you reviewed and scheduled  
16 out more than 15,400 separate  
17 transactions of line items spanning 15  
18 accounts and two banks between August  
19 2017 and April 2022. Do you see that?

20 A. Yes.

21 Q. Now, that document, that  
22 scheduling out was not attached to your  
23 declaration, correct?

24 A. Correct.

25 Q. Why not?

1 DOUGLAS J. SMITH

2 A. Work product. And I was told  
3 to do this work --

4 Q. Don't tell me about what you  
5 were told. I just want to know why you  
6 didn't produce it.

7 MR. GREENWOOD: So to the  
8 extent that the question calls for  
9 you to reveal attorney work  
10 product, that is conversations with  
11 Commission attorneys about the  
12 case, we'll instruct you not to  
13 answer.

14 Q. Okay. So your understanding is  
15 that, therefore, that that 15,400  
16 transaction schedule that you did has not  
17 been produced?

18 MR. GREENWOOD: Objection to  
19 form.

20 Q. Again, we've already gone  
21 through this. I've articulated to you  
22 the SEC made a production, after we asked  
23 for all the schedules and documents that  
24 you looked at or otherwise created in  
25 connection with your declaration,

1 DOUGLAS J. SMITH

2 correct? Do you remember that question?

3 MR. GREENWOOD: You've already  
4 had him testify that he doesn't  
5 know what was produced.

6 MR. SHERMAN: I'm asking if he  
7 understands that a request was made  
8 for all the materials. And I'm  
9 asking him to confirm.

10 You keep objecting to form and  
11 I guess on foundation and I guess  
12 I'm trying to lay out clearly what  
13 he understands.

14 Q. So did you ever see the  
15 document request served on the SEC from  
16 StraightPath in this case?

17 A. No.

18 Q. Okay. And what was the  
19 document -- what did you use that  
20 schedule for? What was the reason you  
21 created it?

22 A. To account for all the inflows  
23 and outflows of the bank accounts.

24 Q. And was that an important  
25 document to you in working through and

1 DOUGLAS J. SMITH

2 creating for your declaration?

3 A. Yes.

4 Q. In paragraph 7 you state that  
5 you have not set forth each and every  
6 fact that you know about the events and  
7 occurrences. Do you see that?

8 A. Yes.

9 Q. Do you see that, sir?

10 A. Yes.

11 Q. And what facts do you know  
12 that you did not set forth in your  
13 declaration?

14 MR. GREENWOOD: And I'm going  
15 to instruct you not to answer to  
16 the extent that the answer calls  
17 for you to reveal attorney work  
18 product. Do you understand the  
19 instruction?

20 THE WITNESS: Yes.

21 Q. I'm just trying to understand.

22 I'm not asking for  
23 communications, Mr. Smith, you know, or  
24 stuff that relates to your discussions  
25 with staff. I'm trying to understand what

1 DOUGLAS J. SMITH  
2 facts and occurrences, outside of  
3 privileged communications with the staff,  
4 that you didn't include in your  
5 declaration.

6 A. I can't think of any.

7 Q. So do you believe that this  
8 declaration includes, outside of  
9 privileged communications, all facts and  
10 occurrences that you know about in  
11 connection with this matter?

12 A. I don't know either way.

13 Q. But you stated in here that it  
14 doesn't include all the facts, correct?

15 MR. GREENWOOD: Objection to  
16 form.

17 Q. I'll rephrase. It says that  
18 you did not include, so that's an  
19 inaccurate statement, correct?

20 A. No.

21 Q. You just testified that you  
22 don't know either way whether you  
23 included all the facts. So how could it  
24 be accurate?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 A. I've done a lot of work on  
4 this case throughout the months and I  
5 can't remember every single thing that I  
6 worked on. All I looked at in preparing  
7 for this deposition is my declaration and  
8 exhibits.

9 Q. Okay. What facts are you aware  
10 of that may undermine your calculations?

11 A. Nothing in my mind would  
12 undermine my analysis.

13 Q. Recognizing you haven't looked  
14 at all the financial documents, including  
15 brokerage account statements, correct?

16 A. Yes. Right. But that doesn't  
17 affect my bank analysis in any way  
18 because I'm already looking at the  
19 brokerage proceeds coming into the bank  
20 account and I'm looking at the cash  
21 distributions from the bank account. I  
22 solely focused on the bank accounts.

23 Q. So really you have no idea  
24 what the brokerage accounts -- let me  
25 rephrase.

1 DOUGLAS J. SMITH

2 Because you have no idea what  
3 the brokerage accounts say, you have no  
4 idea if those documents could undermine  
5 your calculation, do you?

6 A. No, I do know because I'm only  
7 looking at bank account records analysis,  
8 not brokerage record analysis. Nothing  
9 from those records would undermine what  
10 I'm doing.

11 MR. GREENWOOD: We're going an  
12 hour and 15.

13 MR. SHERMAN: You want to take  
14 five?

15 MR. GREENWOOD: Sure.

16 MR. SHERMAN: We'll take a  
17 five minute break.

18 VIDEOGRAPHER: Stand by. Going  
19 off the record at 11:50 a.m. This  
20 is the end of Media Unit 1.

21 (Recess is taken.)

22 VIDEOGRAPHER: We're going  
23 back on the record 12:01 p.m. and  
24 this is the beginning of Media Unit  
25 2. Okay. You may proceed.



1 DOUGLAS J. SMITH

2 Q. So just to touch high level,  
3 again, this is Scott Sherman for Nelson  
4 Mullins.

5 Mr. Smith, you understand  
6 you're still under oath, correct?

7 A. Yes.

8 Q. So just to kind of touch high  
9 level and wrap up what we were just  
10 discussing, you know, as part of this,  
11 your declaration, as you understand it,  
12 has been presented to the court as a  
13 basis of showing a roughly \$14 million  
14 shortfall in stock, correct?

15 A. Yes.

16 Q. Okay. And let's assume that  
17 the brokerage accounts had 100 million or  
18 some number of shares of stock in them.  
19 Wouldn't you think that it would be  
20 important for the court to know about all  
21 the stock that's sitting in the brokerage  
22 accounts as part of your analysis?

23 MR. GREENWOOD: Objection to  
24 form.

25 A. No.

1 DOUGLAS J. SMITH

2 Q. You don't think that looking  
3 at the actual stock held in the brokerage  
4 accounts, when you're accounting for  
5 stock shortfalls is important?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. No.

9 Q. And why not?

10 A. I'm looking at -- I'm looking  
11 at pre-IPO companies that haven't gone  
12 IPO and you're talking about companies  
13 that have gone IPO.

14 Q. I'm talking about overall  
15 assets. You're talking about a shortfall  
16 in stock and we're talking about an  
17 overall asset base held at StraightPath.

18 So let's back up, and very  
19 shortly say -- and the question, just to  
20 cover our bases, you're talking about  
21 that StraightPath is short roughly 14  
22 million in stock, correct?

23 A. I'm saying they're short 14  
24 million in stock they didn't purchase.

25 Q. And in looking at -- let's

1 DOUGLAS J. SMITH

2 assume the brokerage accounts, which you  
3 didn't review, let's assume there was  
4 over 100 million in stock -- I'm making  
5 an assumption here but, again, you didn't  
6 look at the brokerage accounts. My point  
7 is, you do not think it would be  
8 important for the court to understand in  
9 your analysis, overall, how much stock,  
10 overall StraightPath has in talking about  
11 shortfalls in stock? You do not see that  
12 important?

13 A. No.

14 Q. Okay. Let's go to -- we're  
15 going to go through the specific  
16 paragraphs, and so first I want to go to  
17 paragraph 10. In 10 it talks about  
18 Mr. Castillero. Do you see that?

19 A. Yes.

20 Q. It says in the second  
21 sentence, "Castillero is one of the three  
22 founders and beneficial owners of the  
23 StraightPath suite of entities and  
24 funds." Do you see that?

25 A. Yes.

1 DOUGLAS J. SMITH

2 Q. Did you write that sentence?

3 A. No.

4 Q. So just to be clear, as a  
5 staff accountant that you told me on the  
6 record under oath that you were looking  
7 at bank records because that's what you  
8 were using and analyzing, I just want to  
9 make sure, you're stating here and you  
10 determined that Mr. Castillero was a  
11 beneficial owner; is that what you're  
12 saying, correct?

13 MR. GREENWOOD: Objection to  
14 form.

15 Q. Let me say it differently.  
16 You identify him as a  
17 beneficial owner in this, that's in your  
18 declaration, correct?

19 A. Yes.

20 Q. But you didn't draft this  
21 sentence, correct?

22 A. No, but I reviewed it for  
23 accuracy.

24 Q. Okay. And so what expertise do  
25 you have as a staff accountant or

1 DOUGLAS J. SMITH

2 otherwise to determine whether someone is  
3 or isn't a beneficial owner?

4 A. You would look at  
5 incorporation documents; formation  
6 documents of a company; who are the  
7 listed owners; I would look at the bank  
8 account records; who is the signatory on  
9 accounts; who's making the transactions,  
10 a variety of different documents.

11 Q. And so as part of your work as  
12 a staff accountant, it was your  
13 understanding that your role was to  
14 determine whether Mr. Castillero was a  
15 "beneficial owner"?

16 A. I was asked to verify certain  
17 statements and I did.

18 Q. How do you define "beneficial  
19 owner"?

20 A. Someone who controls the vast  
21 majority of a company or entity, but you  
22 mainly look to incorporation documents.

23 Q. Okay. So don't you view the  
24 analysis of whether someone is a  
25 beneficial owner as a legal

1 DOUGLAS J. SMITH

2 determination?

3 MR. GREENWOOD: Objection to  
4 form.

5 A. I don't know.

6 Q. Have you opined on whether  
7 individuals are beneficial owners in  
8 prior matters?

9 A. I don't recall.

10 Q. And so getting back to  
11 information that you said you looked at,  
12 when you look at corporate records  
13 that -- that is the main source that you  
14 would look at to determine whether  
15 someone is an owner of a company,  
16 correct?

17 A. It would be a variety of  
18 reasons. That would be the first thing  
19 that I would look at. I would also look  
20 at Form ADVs, I would also look at  
21 websites. It would be a variety of  
22 things in the day-to-day operations of a  
23 company.

24 Q. So just to back up, though,  
25 when you were looking at analyzing

1 DOUGLAS J. SMITH

2 documents for this matter your focus, as  
3 you discussed earlier, was mainly to  
4 review bank records and provide analyses  
5 of bank records, correct?

6 A. Yes.

7 Q. Okay. And you further state on  
8 paragraph 10, on paper, Castillero was  
9 the majority beneficial owner of the SP  
10 Adviser and SP Fund Manager and actually  
11 it says up until February 2019 on April,  
12 Castillero was the majority beneficial  
13 owner of the SP Adviser and SP Fund  
14 Manager. Did you draft that sentence?

15 A. I'm going to get into  
16 privileged areas in my conversations with  
17 SEC staff on a lot of this, all of these  
18 paragraphs.

19 MR. GREENWOOD: The question  
20 is just; did you draft that  
21 sentence?

22 A. No.

23 Q. Okay. So when you say "on  
24 paper" -- since you didn't draft it but I  
25 guess you reviewed it, right, before you

1 DOUGLAS J. SMITH

2 signed off on it?

3 A. Yes.

4 Q. When you say "on paper  
5 Castillero was the majority beneficial  
6 owner", what did you mean by that?

7 A. I can't remember sitting here  
8 today what it was, what that conversation  
9 was that made me --

10 Q. I'm not asking you for a  
11 conversation. You wrote this. You  
12 understand that the SEC has filed a Civil  
13 Action freezing my client's assets,  
14 correct?

15 A. Yes.

16 Q. Okay. And you're sitting here  
17 today, days after writing this, and you  
18 have no recollection of why you agreed to  
19 put on paper "Mr. Castillero was the  
20 majority beneficial owner?"

21 A. I don't know.

22 Q. And in fact, you have seen  
23 documents that confirm Mr. Castillero was  
24 no longer the owner after February of  
25 2019, correct?



1 DOUGLAS J. SMITH

2 A. I don't know.

3 Q. You don't know if you've seen  
4 a document referencing -- let's back up.

5 It says "on paper Castillero  
6 was the majority owner." Do you remember  
7 what paper you are referring to?

8 A. I don't remember.

9 Q. Okay. Do you ever recall as  
10 part of your analysis of bank records  
11 that you also may have looked at some  
12 operating agreements or corporate  
13 filings?

14 A. I looked at a lot of documents  
15 and I don't remember them all, and I  
16 can't point to specific documents for  
17 this paragraph, where I took it from.

18 Q. I'm asking a more general  
19 question.

20 Do you remember looking at one  
21 Delaware corporate filing for  
22 StraightPath or any of the entities?

23 A. I believe I did, yes.

24 Q. Which ones were those?

25 A. I don't remember.

1 DOUGLAS J. SMITH

2 Q. So sitting here today, you  
3 have no idea what document would show  
4 that Mr. Martinsen was the owner of  
5 StraightPath after February 2018?

6 A. I don't know.

7 Q. And then you also, again, say  
8 he was the majority beneficial owner. Do  
9 you see that where it says "majority  
10 beneficial owner?"

11 A. Yes.

12 Q. Okay. Who is the minority  
13 beneficial owner?

14 A. I don't know.

15 Q. So sitting here today, when  
16 you write -- do you understand that the  
17 SEC has used your declaration to support  
18 statements in their memorandum of law,  
19 including this very item? Do you  
20 understand that?

21 A. Yes.

22 Q. Okay. So you have read the  
23 memorandum?

24 A. The memorandum of what?

25 Q. The memorandum of law.

1 DOUGLAS J. SMITH

2 A. No.

3 Q. Okay. So you just testified  
4 that you understood that the SEC was  
5 using your declaration for the  
6 memorandum, you said yes, do you remember  
7 that testimony?

8 A. I thought you were talking  
9 about the Complaint.

10 Q. Okay. So sitting here today,  
11 recognizing that your declaration was  
12 used, do you know how it was used by the  
13 SEC in connection with its emergency  
14 relief to take over my client's company  
15 and all their assets?

16 MR. GREENWOOD: Objection to  
17 form.

18 Q. Do you have any idea how this  
19 declaration was used?

20 A. It was to support the  
21 Complaint.

22 Q. Right. Okay. So in supporting  
23 the Complaint, would you think it  
24 important to look at the memorandum to  
25 make sure -- your memorandum of law, to

1 DOUGLAS J. SMITH

2 make sure you're comfortable with  
3 statements in the memorandum to make sure  
4 you're comfortable that your declaration  
5 actually supports those statements?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. I don't know.

9 Q. Okay. Because you didn't look  
10 at the memorandum of law, correct?

11 A. Yes.

12 Q. Okay. So just to confirm then,  
13 when it says "Castillero was a majority  
14 beneficial owner", you have no idea what  
15 "majority" means, sitting here today?

16 A. I mean, in my mind, I would  
17 view it as more than 50%.

18 Q. So who was the other part of  
19 the more than -- the less than 50%?

20 A. I don't know.

21 Q. So how could you possibly  
22 state it was a majority if you don't even  
23 know who the members are, according to  
24 your declaration?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 A. I don't know.

4 Q. Do you have any idea of how  
5 the use of the word "beneficial owner",  
6 as you use it, advances the merits of the  
7 SEC Complaint allegations?

8 MR. GREENWOOD: Objection to  
9 form.

10 A. I don't know.

11 Q. So another way of asking, you  
12 have no idea how or if the term  
13 "beneficial owner", from your  
14 declaration, was used in the Complaint in  
15 this case, correct?

16 A. I don't know.

17 Q. And you have no idea how or if  
18 the use of the words "beneficial owner"  
19 from your declaration was used in the  
20 memorandum of law or motion to support  
21 the emergency relief here, correct?

22 A. I don't know.

23 Q. Okay. Now, you state here in  
24 paragraph 11 that, "Mr. Martinsen became  
25 the purported majority owner of both the

1 DOUGLAS J. SMITH  
2 SP Fund Manager and the SP Adviser in  
3 early February 2019 when Castillero  
4 purportedly transferred his interest in  
5 these companies to Martinsen." Do you see  
6 that?

7 A. Yes.

8 Q. Let me ask you, when you're  
9 doing this declaration and you're signing  
10 this, do you see this as just a  
11 numbers-driven declaration as far as --  
12 let me rephrase.

13 Do you see this as a  
14 declaration really to outline the numbers  
15 that you have calculated?

16 MR. GREENWOOD: Objection to  
17 form.

18 A. I don't understand the  
19 question.

20 Q. Okay. In looking at the  
21 declaration do you view it as an advocacy  
22 piece for the SEC's position in this  
23 case?

24 A. I don't view it one way or the  
25 other. You know, I'm conducting analysis

1 DOUGLAS J. SMITH

2 based on work that I did. I focus  
3 primarily on the bank records, what we're  
4 going over now. You know, I did look at  
5 in the past and I just don't remember.

6 Q. Sorry. Go ahead. Apologies.

7 A. The questions that you're  
8 asking I don't remember. It has been many  
9 months before.

10 Q. When did you first -- when did  
11 you first get a copy of this draft  
12 declaration?

13 A. I believe Wednesday last week.

14 Q. Okay. So wouldn't it be  
15 important when you're looking at a  
16 declaration, which was last Wednesday, to  
17 make sure you're comfortable with every  
18 statement you're about to attest to under  
19 oath?

20 A. Yes.

21 Q. So the concept that you may  
22 have looked at a document months before  
23 is kind of irrelevant, right, because you  
24 want to make sure now, sitting here  
25 today, that your declaration is 100%

1 DOUGLAS J. SMITH

2 accurate, correct?

3 MR. GREENWOOD: Objection to  
4 form.

5 A. So I'm going to get into  
6 conversation that I had --

7 Q. I'm not asking for that. I'm  
8 asking for the fact that you would want  
9 to make sure that your deposition is only  
10 stuff that you have personal knowledge  
11 of, correct?

12 MR. GREENWOOD: Objection to  
13 form.

14 A. Yes.

15 Q. And just to confirm on  
16 personal knowledge, just on paragraph 3  
17 it says, "I make this declaration based  
18 on my personal knowledge, information and  
19 belief." Do you see that in paragraph 3?

20 A. Yes.

21 Q. So when you agreed to use --  
22 let me ask you, did you draft this  
23 paragraph 11 about where it says that  
24 Mr. Martinsen became the purported  
25 majority owner?



1 DOUGLAS J. SMITH

2 A. I did not.

3 Q. Okay. So when you used the  
4 word -- you agree to use the word  
5 "purported", it's used to call into  
6 question whether he is the owner,  
7 majority or not, correct?

8 MR. GREENWOOD: Objection to  
9 form.

10 A. Yes.

11 Q. Okay. So what basis did you  
12 have to assess whether or not there was a  
13 question whether Mr. Martinsen was the  
14 majority owner or full owner of  
15 StraightPath at that time?

16 MR. GREENWOOD: I'll object to  
17 the extent the question calls for  
18 you to reveal attorney -- strike  
19 that -- attorney work product  
20 information.

21 A. I mean, that's where I'm going  
22 with my responses.

23 Q. I'm not asking you for  
24 communications. Look, I'm not asking for  
25 whether or not you had to ask what

1 DOUGLAS J. SMITH

2 "purported" meant when you were asked to  
3 put that into your declaration. I'm not  
4 asking that.

5 What I'm asking for is; what  
6 basis -- since this is your declaration,  
7 based on your personal knowledge, what  
8 basis did you have to put that he was the  
9 purported majority owner of SP Fund  
10 Manager? What documents? What basis did  
11 you have to say that?

12 A. I don't remember.

13 Q. Don't you think it would be  
14 important to know these things? You only  
15 signed the things last Wednesday,  
16 correct?

17 A. Yes.

18 Q. So last Wednesday you knew  
19 what the basis was but today you don't?

20 MR. GREENWOOD: Objection to  
21 form.

22 A. Yes.

23 Q. Now, you state here that,  
24 paragraph 11, "Mr. Martinsen resides in  
25 St. James, New York." Do you see that?

1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Okay. So what analysis did you  
4 do in reviewing I guess the bank records  
5 or others to determine that  
6 Mr. Martinsen's residence is St. James,  
7 New York?

8 A. I believe I looked at current  
9 records, bank account records.

10 Q. Are you saying that he's  
11 currently a legal resident of New York in  
12 this statement?

13 MR. GREENWOOD: Objection to  
14 form.

15 A. I don't know.

16 Q. Do you know what the word  
17 "resident" signifies?

18 MR. GREENWOOD: Objection to  
19 form.

20 A. Well, I mean, one of his  
21 addresses is in St. James, New York,  
22 so --

23 Q. So did you draft this sentence  
24 that says that he resides in St. James?

25 A. No.

1 DOUGLAS J. SMITH

2 Q. Okay. Do you have any idea how  
3 the SEC is using or whether they are or  
4 not using the phrase in your declaration  
5 that he resides in St. James?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. I don't know.

9 Q. Okay. Have you ever inquired  
10 whether Mr. Martinsen is a Florida  
11 resident and not a New York residents?

12 A. I don't know --

13 Q. Strike that. I'm not asking  
14 you for communications with staff. Let me  
15 say this differently.

16 Have you ever looked into  
17 whether Mr. Martinsen was a Florida  
18 resident or a New York resident?

19 A. I don't know.

20 Q. Okay. Again, here you also  
21 used the phrase that he's a beneficial  
22 owner and I guess we'll just kind of not  
23 go over this ad nauseam, but just to  
24 confirm, you didn't draft this section  
25 and statement about use -- about the word

1 DOUGLAS J. SMITH

2 beneficial owner, correct?

3 A. Correct.

4 Q. Okay. And what analysis did  
5 you do to confirm whether Mr. Martinsen  
6 was, as you state, or at least you agreed  
7 to state from someone else's writing,  
8 that he was a beneficial owner?

9 MR. GREENWOOD: Objection to  
10 form.

11 Q. I'll say what analysis did you  
12 do on Mr. Martinsen's ownership?

13 A. You know, again, I looked at a  
14 variety of documents. I don't remember or  
15 can't recall which exact ones I looked  
16 at.

17 Q. Okay. So in paragraph 12 you  
18 now speak of Ms. Lanaia and you state  
19 that she's a beneficial owner, correct?

20 A. Yes.

21 Q. And do you have any idea  
22 whether the SEC has used your statement  
23 about her being a beneficial owner in its  
24 papers filed with the court?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 A. I don't know.

4 Q. You don't think it would be  
5 important to understand how your  
6 declaration may be used by the SEC in  
7 their filings?

8 MR. GREENWOOD: Objection to  
9 form.

10 A. I don't know.

11 Q. Okay. So let me to go  
12 paragraph 13 now. You say, or at least  
13 the declaration says that, "Mr. Lachow  
14 from inception until around September  
15 2021 Lachow served as the nominal manager  
16 of the SP Fund Manager." Do you see that?

17 A. Yes.

18 Q. Okay. You didn't draft that  
19 statement, correct?

20 A. Correct.

21 Q. Okay. But you reviewed it and  
22 confirmed that based on personal  
23 knowledge you understood that statement  
24 to be true?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 A. Yes.

4 Q. Okay. Sitting here today, you  
5 believe that statement to be true?

6 A. Yes.

7 Q. Okay. So when you say or you  
8 agree to the word "nominal manager", what  
9 does that mean?

10 A. I don't know.

11 Q. Don't you think it's important  
12 to know stuff you write in your  
13 declaration or agree to in your  
14 declaration?

15 A. Yes.

16 Q. Okay. So paragraph 13, you say  
17 this is after Castillero -- "After  
18 Castillero purportedly resigned in  
19 February 2019 Lachow became the managing  
20 member of the SP Adviser and 1% owner of  
21 both the SP Adviser and SP Fund Manager."  
22 Do you see that?

23 A. Yes.

24 Q. Did you draft that?

25 A. No.

1 DOUGLAS J. SMITH

2 Q. What document did you look at  
3 to confirm that Mr. Lachow became the  
4 managing member and 1% owner?

5 A. That would have been a variety  
6 of documents.

7 Q. What are they?

8 A. I don't remember.

9 Q. Did you last Wednesday when  
10 you signed this thing?

11 MR. GREENWOOD: Objection to  
12 form.

13 A. Yes.

14 Q. But sitting here today -- you  
15 understand that we are in a preliminary  
16 injunction process on expedited discovery  
17 where we're trying to get answers to  
18 things you put in your declaration. Do  
19 you understand that, sir?

20 A. Yes.

21 Q. Okay. And so when I asked you  
22 what the basis is for why you put  
23 information in, do you understand -- does  
24 that concern you that you don't know the  
25 answer today?



1 DOUGLAS J. SMITH

2 A. No.

3 MR. GREENWOOD: Objection to  
4 form.

5 Q. Why doesn't it concern you  
6 that you can't answer a declaration that  
7 you signed less than week ago?

8 A. Because I can't remember  
9 everything. I just don't remember.

10 Q. So let me -- let's bring up an  
11 exhibit, the operating agreement  
12 document, Josh.

13 (Defendant's Exhibit 2,  
14 Operating Agreement of StraightPath  
15 Venture Partners, dated as of May  
16 11, 2017, Bates SVP000001, was  
17 received and marked on this date  
18 for identification.)

19 MR. GREENWOOD: Are you going  
20 to share this?

21 MR. SHERMAN: No. It should  
22 be -- if you hit the little button  
23 it should come up. It takes a  
24 minute.

25 MR. LEWIN: When I publish it

1 DOUGLAS J. SMITH

2 it will show up in the shared  
3 folders.

4 MR. SHERMAN: It just takes a  
5 minute. So you have to --

6 THE WITNESS: It's not there  
7 yet. Hold on.

8 MR. SHERMAN: Josh, just let  
9 us know when it's there.

10 MR. LEWIN: It should be there  
11 now.

12 Q. The operating agreement, if  
13 you want to pull it up. Okay. Tell me  
14 when you're ready.

15 A. Yes, I'm ready.

16 Q. Can you look -- this is a  
17 document that's marked as D Exhibit 0002,  
18 and it's titled Operating Agreement of  
19 StraightPath Venture Partners. If you  
20 don't mind kind of flipping through the  
21 document and letting me know when you're  
22 ready.

23 MR. GREENWOOD: Is there a  
24 Bates number for this document?

25 MR. SHERMAN: Yes. It's Bates

1 DOUGLAS J. SMITH

2 labeled --

3 MR. LEWIN: This document  
4 we're going to -- this will be  
5 included in the production received  
6 today, referenced in the discovery  
7 responses served last night.

8 MR. SHERMAN: But to confirm,  
9 Lee, for the record, a lot of  
10 these -- we came on about a year  
11 after documents were produced and  
12 it's our understanding that all  
13 these documents were produced and I  
14 believe we've actually spoken at  
15 times about this document. So in an  
16 abundance of caution we reproduced  
17 documents on the formation stuff.

18 MR. GREENWOOD: Right now you  
19 don't have a Bates number for  
20 Exhibit 2?

21 MR. SHERMAN: We do. It's  
22 Bates labeled as of the production  
23 today but, again, original  
24 productions were not done with  
25 Bates numbers. So this has

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1 DOUGLAS J. SMITH

2 SVP000001 to SVP0000014.

3 Q. Just let me know when you're  
4 ready, sir.

5 A. I'm ready.

6 Q. Do you recall seeing this  
7 document?

8 A. I don't remember. I don't  
9 know.

10 Q. So, let me just kind of -- so  
11 you have no recollection of this  
12 document?

13 A. Not today, no.

14 Q. Now, you see at the end that  
15 -- you see the last page it's executed by  
16 one individual, Eric Lachow, but not  
17 managing member 2? Do you see that?

18 A. Yes.

19 Q. Do you know what it means to  
20 have a document that's not fully  
21 executed?

22 MR. GREENWOOD: Objection to  
23 form.

24 A. I don't know.

25 Q. Okay. So sitting here today,

1 DOUGLAS J. SMITH

2 you don't recall ever seeing this  
3 document?

4 MR. GREENWOOD: Objection to  
5 form, asked and answered.

6 A. No.

7 MR. SHERMAN: Josh, why don't  
8 you pull up the next, the Delaware  
9 filing?

10 (Defendant's Exhibit 3, SP  
11 Venture Partners Delaware filing  
12 dated February 12, 2019, Bates  
13 SVP000015, was received and marked  
14 on this date for identification.)

15 Q. Just to confirm, while we're  
16 waiting, you said earlier that part of  
17 what you would look at if someone is a  
18 beneficial owner, you would look at  
19 corporate documents, documents filed with  
20 the State?

21 A. Yes.

22 MR. SHERMAN: Just let us know  
23 when it's ready, Josh.

24 MR. LEWIN: If should be ready  
25 if you refresh it.

1 DOUGLAS J. SMITH

2 Q. Okay. This is a document  
3 that's from February of 2019, same time  
4 period as in paragraph 3. It's a State of  
5 Delaware file -- filed document. It's  
6 Bates -- it's document D003. I think the  
7 Bates label -- sorry, the Exhibit 1  
8 actually covers the first Bates label but  
9 it's SVP000015 to -17.

10 MR. GREENWOOD: Is this in  
11 today's production or prior  
12 production or --

13 MR. SHERMAN: Both, my  
14 understanding is both.

15 MR. GREENWOOD: Okay. Thank  
16 you.

17 Q. Let me know when you're ready.

18 A. Yes.

19 MR. SHERMAN: You know, this  
20 actually may be the prior  
21 production Bates labeling. I'll  
22 double check when we're off the  
23 record. But when it says SVP00016,  
24 this could have been at the  
25 beginning of our production when I

1 DOUGLAS J. SMITH

2 got involved in September. But  
3 either way, I know it was produced  
4 during the investigation and we are  
5 reproducing it.

6 Q. So have you ever seen a  
7 document like this before?

8 A. Yes.

9 Q. So you see that -- you  
10 understand it's a document that  
11 StraightPath Venture Partners filed with  
12 the State of Delaware and it has February  
13 12, 2019. Do you see that?

14 A. Yes.

15 Q. Okay. And if you scroll down  
16 to the second page it says that, "I,  
17 Jeffrey W. Bullock, Secretary of State of  
18 the State of Delaware, do hereby certify  
19 the attached is a true and correct copy  
20 of the Certificate of Amendment of  
21 StraightPath Partners LLC, filed in this  
22 Office on the 11th day of February, 2019  
23 at 9:30 o'clock a.m." Do you see that?

24 A. Yes.

25 Q. So if you scroll down it says

1 DOUGLAS J. SMITH

2 "State of Delaware Certificate of  
3 Amendment", this is the third page  
4 labeled SVP000017. Do you see that?

5 A. Yes.

6 Q. So then it says, this is  
7 paragraph 2, "Certificate of formation of  
8 the limited liability company is hereby  
9 amended as follows." And do you see that  
10 that on paragraph 2?

11 A. Yes.

12 Q. And then it says StraightPath  
13 Ventures is adding in Article 3, "Michael  
14 Castillero resigned as Director and  
15 Managing Member." Do you see that?

16 A. Yes.

17 Q. "All member interests are  
18 transferred to Brian Martinsen." Do you  
19 see that?

20 A. Yes.

21 Q. "Brian Martinsen will be the  
22 Director and Managing Member of  
23 StraightPath Venture Partners, LLC." Do  
24 you see that?

25 A. Yes.



1 DOUGLAS J. SMITH

2 Q. Okay. Do you remember seeing  
3 this document?

4 A. Not today, no.

5 Q. Okay. So in -- does it concern  
6 you that in paragraph 13 you say that  
7 Mr. Lachow is a 1% owner but here I've  
8 shown you a document that shows that  
9 Mr. Martinsen is -- has all membership  
10 interest. Do you see that? Does that  
11 concern you?

12 MR. GREENWOOD: Objection to  
13 form.

14 A. No.

15 Q. And why not?

16 A. You know, this is what they're  
17 representing to the State of Delaware.  
18 Whether they -- that's -- how it operated  
19 on a day-to-day level of StraightPath  
20 could be different.

21 Q. Right. But sitting here  
22 today, you have no idea what document you  
23 may or may not have looked at to support  
24 your statement in paragraph 13 about  
25 Mr. Lachow being a 1% owner, correct?

1 DOUGLAS J. SMITH

2 A. I know I looked at documents,  
3 I just don't know which ones.

4 Q. I got that. So let's move --  
5 let's look at paragraph 17 of your  
6 declaration.

7 You say in here in 17, "In  
8 addition to the SP Funds, bank records  
9 and other internal tracking documents and  
10 spreadsheets from the SP Fund Manager  
11 show that the SP Fund Manager also  
12 collected investor money in its own bank  
13 account and the bank account of SP  
14 Holdings." Do you see that?

15 A. Yes.

16 Q. What is the purpose of that  
17 statement?

18 MR. GREENWOOD: Objection to  
19 form.

20 Q. I'm asking him; did you  
21 include -- let me ask you a different  
22 question.

23 Did you draft that statement?

24 A. No.

25 Q. Okay. So do you have any idea

1 DOUGLAS J. SMITH

2 why it was included in the declaration?

3 A. I don't know.

4 Q. Do you know the -- let me ask,  
5 do you have any idea of what the purpose  
6 of including that in the declaration is?

7 A. Yes. That investor funds are  
8 going to the SP Fund Manager and to the  
9 individuals mentioned.

10 Q. Okay. And do you believe  
11 there's some issue or concern about  
12 investor funds going to the SP Fund  
13 Manager?

14 A. I'm simply saying -- I'm  
15 simply tracking the flow of funds.

16 Q. I'm asking you; did you have  
17 some -- I believe there is some concern  
18 about the fact that funds would go from  
19 investors and end up in the SP Fund -- SP  
20 Ventures account?

21 MR. GREENWOOD: Objection to  
22 form.

23 A. Yes, because of the various  
24 other paragraphs and my exhibits.

25 Q. When you say "the various

1 DOUGLAS J. SMITH

2 other paragraphs", you're saying that  
3 other paragraphs support a concern that  
4 investor funds would, as we state here,  
5 go to the SP Fund Manager?

6 A. Yes.

7 Q. Okay. And so let me ask you  
8 this, my recollection from your prior  
9 testimony is you did not review the  
10 Private Placement Memorandum in this case  
11 for any of the offerings, right?

12 A. No, I may have. I don't  
13 remember.

14 Q. So sitting here today, do you  
15 have any recollection of what the  
16 managers' rights were as disclosed in the  
17 PPM?

18 MR. GREENWOOD: Objection to  
19 form.

20 A. I don't know.

21 Q. So let me show you exhibit --  
22 the next exhibit on the PPM Use of  
23 Proceeds.

24 MR. GREENWOOD: Is this also  
25 in the folder?

1 DOUGLAS J. SMITH

2 MR. SHERMAN: It will be.

3 MR. LEWIN: It should be there  
4 now.

5 A. Yes.

6 Q. Okay. So here let's look at  
7 Use of Proceeds. But let me know when  
8 you're done. This is a document that  
9 comes from the PPM, the Private Placement  
10 Memorandum. Are they similar and  
11 identical in numerous private offerings  
12 connected to StraightPath?

13 MR. GREENWOOD: Which private  
14 placement?

15 MR. SHERMAN: The Private  
16 Placement Memorandum, I believe  
17 this is the same language in all of  
18 the PPMs. So we took pages 2 and 3  
19 rather than the whole thing. This  
20 was obviously produced to the SEC  
21 during the course of the  
22 investigation. It's Exhibit 4,  
23 SPVP-SEC0533938 to 53539.

24 (Defendant's Exhibit 4,  
25 excerpt of Use of Proceeds, Bates

1 DOUGLAS J. SMITH

2 SPVP-SEC-053939, was received and  
3 marked on this date for  
4 identification.)

5 Q. Let me know when you're ready.

6 A. I'm ready.

7 Q. And we can -- if it's helpful,  
8 why don't we just do this, just to be  
9 clear so there is no confusion, I'll ask  
10 the questions but then afterwards, for  
11 the record, Josh will introduce as  
12 Exhibit 5 the full PPM, so there is no  
13 confusion but just to get through this  
14 I'll go through this first. Okay, Mr.  
15 Smith?

16 A. Okay.

17 Q. So on the bottom of page 2  
18 says, "The manager expects to use the net  
19 proceeds from the offerings to invest  
20 directly or indirectly in portfolio  
21 companies." Do you see that?

22 A. Yes.

23 Q. So according -- isn't it true  
24 then that the manager could, in fact, use  
25 funds that came into the StraightPath

1 DOUGLAS J. SMITH

2 funds from investors?

3 MR. GREENWOOD: Objection to  
4 form.

5 A. What's the question?

6 Q. Okay. So here it says the  
7 manager can use proceeds from the  
8 offering -- let's break it down.

9 So do you understand what  
10 "proceeds from the offering" means?

11 MR. GREENWOOD: You're asking  
12 him does he understand that?

13 MR. SHERMAN: Yes.

14 A. Could you please explain what  
15 you mean?

16 Q. Okay. So what I'm saying, do  
17 you understand how the investment works,  
18 where an investor invests in a fund?

19 MR. GREENWOOD: Objection to  
20 form.

21 A. Yes, generally.

22 Q. Okay. What's your  
23 understanding?

24 A. An investor sends in money and  
25 they are purchasing something.

1 DOUGLAS J. SMITH

2 Q. Okay. So when the money gets  
3 sent in do you understand that that money  
4 can be called proceeds from --

5 MR. GREENWOOD: Objection.

6 Q. Do you understand what the  
7 word "proceeds" means?

8 A. No. I don't know what you are  
9 referring to.

10 Q. Okay. In looking at -- do you  
11 recall looking at this portion of the PPM  
12 when undertaking a review of documents in  
13 this case?

14 A. No.

15 Q. Okay. So earlier you expressed  
16 a concern about funds going from  
17 investors and ending up in the  
18 StraightPath managers' bank account,  
19 correct?

20 A. Yes.

21 Q. But just to be clear, you have  
22 no idea what the -- from your testimony,  
23 what the manager's rights were with  
24 respect to funds coming into the  
25 offering, correct?



1 DOUGLAS J. SMITH

2 A. I don't know.

3 Q. Okay. So how could you express  
4 a concern about money coming in from  
5 investors and going to the manager if you  
6 have no idea what the manager's rights  
7 are?

8 MR. GREENWOOD: Objection to  
9 form.

10 A. So there's commingling  
11 happening amongst the various funds and I  
12 remember viewing that each fund should be  
13 segregated, and it was not segregated, I  
14 saw instances of Ponzi-like payments and  
15 that causes me great concern.

16 Q. So you are now an expert in  
17 looking at Ponzi-like, that's your  
18 phrase?

19 MR. GREENWOOD: Objection to  
20 form.

21 A. I never said expert. I am  
22 simply analyzing all inflows and outflows  
23 of this bank account.

24 Q. And I need to get back to the  
25 question because you didn't answer it.

1 DOUGLAS J. SMITH

2 When I asked -- I asked that  
3 there's a statement in your -- in your  
4 declaration that -- and you said that you  
5 had concerns that money went from  
6 investors into the funds and up to the  
7 manager. Do you recall that concern you  
8 expressed?

9 MR. GREENWOOD: Objection to  
10 form, misstates the testimony.

11 A. Yes.

12 MR. SHERMAN: Okay. Well, I  
13 didn't misstate it then because he  
14 recalls it.

15 Q. And so what I'm asking is,  
16 ultimately, and just to kind of not beat  
17 a dead horse but to make clear, you,  
18 sitting here today, have no idea what the  
19 manager's rights were with respect to  
20 being able to or not being able to use  
21 investment funds and bring them up to the  
22 manager's bank account, you have no idea?

23 A. I don't know what those rights  
24 are.

25 Q. Now, next you state on 17 that

1 DOUGLAS J. SMITH

2 internal tracking spreadsheets -- you  
3 specifically -- the internal tracking  
4 spreadsheets specifically that an  
5 investor has reinvested -- let me look at  
6 this.

7 You say, "In some instances  
8 these internal tracking spreadsheets  
9 specify that an investor has reinvested  
10 his or her profits from a prior offering  
11 into New Series investments and new  
12 pre-IPO shares but the precise SP Fund or  
13 series is not identified." Correct?

14 A. Yes.

15 Q. And we talked about earlier  
16 that you have never looked at the  
17 brokerage statements, correct?

18 A. I've looked at them.

19 Q. Now you've saying you've  
20 looked at the brokerage statements?

21 A. I've looked at them, yes. As  
22 far as doing any substantial analysis,  
23 no.

24 Q. You mean you've picked them up  
25 and saw there was a brokerage statement

1 DOUGLAS J. SMITH

2 and put it down?

3 MR. GREENWOOD: Objection to  
4 form.

5 Q. I'll move on. Let me  
6 understand.

7 You also did some analysis  
8 about reinvestments where money, you  
9 know, distributions, investment, returns,  
10 did not always go out to investors  
11 because they decided to reinvest,  
12 correct?

13 A. Yes.

14 Q. But you spoke earlier about  
15 the fact that you did not -- you did some  
16 analysis that you could not complete  
17 because you didn't have all the  
18 documents, correct, related to this?

19 A. No. That's mischaracterizing  
20 what I said.

21 Q. Okay. Did you not do an  
22 analysis that included reinvestment that  
23 you could not complete?

24 A. I completed it. There could be  
25 more.

1 DOUGLAS J. SMITH

2 Q. All right. Because you don't  
3 have all the documents, you're saying?

4 A. No. I did -- I did my analysis  
5 based on the documents that were provided  
6 and it didn't involve me looking at the  
7 brokerage records to do that analysis.

8 Q. I understand. But there's  
9 other documents -- clearly, there is  
10 other documents that you needed to  
11 complete the other analysis that we  
12 talked about earlier, the 17 million  
13 number?

14 MR. GREENWOOD: Objection to  
15 form.

16 A. No. The bank account records  
17 show inflows and outflows. There are 17  
18 million of inflows that are unaccounted  
19 for because we don't have documents.

20 Q. Okay. So let me make sure, you  
21 did not -- just to be clear, from your  
22 analysis you do not know where all the  
23 funds were reinvested, correct?

24 MR. GREENWOOD: Objection to  
25 form.

1 DOUGLAS J. SMITH

2 A. I don't understand the  
3 question.

4 Q. Okay. With respect to  
5 reinvesting of funds, did you complete an  
6 analysis of every investment?

7 A. I don't -- I looked at the  
8 inventory spreadsheets that StraightPath  
9 kept and they identified people that were  
10 using their IPO proceeds to invest in a  
11 new pre-IPO issuer and that's what I did.

12 Q. When you say "that's what I  
13 did", that's what you did what?

14 A. So I categorized those amounts  
15 and scheduled those out.

16 Q. Okay. So sitting here today,  
17 I'm just trying to ask a very simple  
18 question, I can move on, is it your  
19 understanding that you accounted for all  
20 reinvestments of money from investors in  
21 other offerings?

22 A. I don't know if I captured all  
23 of them.

24 Q. Okay. So by not capturing all  
25 of them you don't know for sure if the

1 DOUGLAS J. SMITH

2 calculation of funds raised is accurate,  
3 correct?

4 A. No. I do know that the funds  
5 raised is accurate.

6 Q. Okay.

7 A. It could be more than that.  
8 That's a minimum.

9 Q. Right. So you don't have a  
10 complete picture?

11 A. Yes. It could be more that  
12 they raised from investors, but at a  
13 minimum, that's a complete picture.

14 Q. So going to Exhibits 1 and 2  
15 of your -- of your declaration, just to  
16 be clear, based on your analysis there's  
17 been a total of 411,591, correct?

18 A. Yes.

19 Q. But it could be more, is what  
20 you're saying?

21 A. Yes.

22 Q. How did you calculate this  
23 number?

24 A. Looking at the bank account  
25 records as well as various documents in

1 DOUGLAS J. SMITH

2 paragraph 5.

3 Q. Okay. So just to be clear, you  
4 looked at the StraightPath bank account  
5 records that were with Signature Bank and  
6 JPMorgan; is that right?

7 A. Yes.

8 Q. Okay. And what was the other  
9 documents you looked at?

10 A. The documents referenced in  
11 paragraph 5.

12 Q. Okay. And does Exhibit 2  
13 account for all of the funds raised --  
14 let me rephrase.

15 This is not a complete  
16 picture, as we discussed earlier because  
17 there could be more amounts raised that's  
18 -- sorry. I'm asking questions for too  
19 long. Let me rephrase it.

20 Under Exhibit 2 it says  
21 "amounts raised and refunded", correct?

22 A. Yes.

23 Q. And let me ask you this; with  
24 respect to the backup documentation that  
25 you have, did you include all your kind



1 DOUGLAS J. SMITH

2 of spreadsheets here?

3 A. Yes.

4 Q. Okay. So the full analysis  
5 related to amounts raised and refunded is  
6 all here?

7 A. Yes.

8 Q. And you're not -- not to  
9 belabor it, but with respect to  
10 productions --

11 A. Except for the 17 million. The  
12 17 million is here but it's just, you  
13 know, unknown. We don't know which  
14 pre-IPO issuer it refers to.

15 Q. You're saying the 17 million  
16 is baked into this?

17 A. It's in here. Sorry.

18 Q. Okay. So let's see. And then  
19 you have in here that there is -- you say  
20 based on your analysis there has been a  
21 total of 13,554,031 reinvested to  
22 investors. Do you see that?

23 A. Yes.

24 Q. How did you calculate that?

25 A. So that's the amount that's

1 DOUGLAS J. SMITH

2 been refunded based on the initial  
3 investment. So, you know, investors  
4 wanted their money back and so it was  
5 categorized as such.

6 Q. Just backing up for a minute,  
7 where is the support for the 411 million?  
8 Where did you add this up?

9 A. From the bank record,  
10 scheduling it out into Excel.

11 Q. So as far as the Excel, I  
12 don't see the backup for that, except for  
13 what's in -- are you saying there's --  
14 that Exhibit 2 is the complete analysis  
15 of showing the 411? There is nothing  
16 more than what's in Exhibit 2 as far as  
17 your Excels?

18 A. Right. Exhibit 1 is a summary  
19 of all the amounts and Exhibit 2 is  
20 details of that summary.

21 Q. Okay. Now, just getting back  
22 to refunds and moving on from that, when  
23 you say a "refund", what is your  
24 definition of "refund"?

25 A. So an investor wants their

1 DOUGLAS J. SMITH

2 money back and they don't get their  
3 shares and they just want their initial  
4 investment back.

5 Q. Okay. Any idea of whether or  
6 not something that you defined as a  
7 refund could be an investor return, like,  
8 sorry, an investment return?

9 A. There could be. The vast  
10 majority of these matched up  
11 dollar-for-dollar with what they put in.

12 Q. But to confirm, in some  
13 instances you used the word "refund" but  
14 it actually could be something else,  
15 correct?

16 A. This was -- this is my  
17 understanding that they're refunds --

18 Q. But you did the analysis --

19 A. -- of the documents that I  
20 looked at.

21 Q. But you just also testified  
22 that some of them could be investment  
23 returns?

24 A. I could have -- it could be,  
25 but I verified in our system in Recomind

1 DOUGLAS J. SMITH

2 that they were refunds.

3 Q. I'm going to move on to  
4 paragraph 19 of your declaration.

5 So here in paragraph 19 you  
6 state that, "Based on the documents  
7 available to me I've calculated the  
8 deficit and pre-IPO shares across all SP  
9 Funds and other investment vehicles  
10 managed by the SP Fund Manager." Do you  
11 see that?

12 A. Yes.

13 Q. What were the documents that  
14 were used to make that calculation that  
15 were available to you as you state?

16 A. Right. The bank records and  
17 the specific documents that I reference  
18 in paragraph 5.

19 Q. What documents were not  
20 available that you could have looked at  
21 or could have had to complete your  
22 calculation?

23 MR. GREENWOOD: Objection to  
24 form.

25 A. Just the 17 million of inflows

1 DOUGLAS J. SMITH

2 from investors. I don't know which  
3 pre-IPO companies they invested in.  
4 That's the only thing I'm missing.

5 Q. Okay. When you say "other  
6 investment vehicles managed by the SP  
7 Fund Manager", what are you talking  
8 about? Let me back up, actually.

9 Did you write this?

10 A. No.

11 Q. Okay. So do you have any idea  
12 what other investment vehicles this  
13 sentence is referring to?

14 A. It would be SP Holdings or SP  
15 Management, one of the two StraightPath  
16 bank accounts that are not the funds.

17 Q. Have you identified any  
18 "investment vehicles" other than  
19 StraightPath funds with a perceived  
20 deficit?

21 MR. GREENWOOD: Objection to  
22 form.

23 A. I don't understand the  
24 question.

25 Q. Okay. So it says here that you

1 DOUGLAS J. SMITH

2 have calculated the deficit and pre-IPO  
3 across all SP Funds and other investment  
4 vehicles. And I'm asking; did you  
5 calculate a deficit of what you defined  
6 as "other investment vehicles"?

7 I'm just reading your sentence  
8 to try and understand --

9 A. So I'm looking at all the bank  
10 accounts, all investors, you know,  
11 whatever bank account they sent in monies  
12 to and I'm calculating a shared deficit  
13 based on that total.

14 Q. I'm trying to get clarity and  
15 we can move on.

16 You said that "deficit and  
17 pre-IPO shares across all SP Funds and  
18 other investment vehicles." Do you see  
19 that?

20 A. Yes.

21 Q. So I'm just asking, did you  
22 find a deficit in pre-IPO shares in other  
23 investment vehicles?

24 A. Yes. So I did it on a combined  
25 basis. Sometimes an investor sends in

1 DOUGLAS J. SMITH

2 funds mistakenly to SP Holdings or some  
3 other StraightPath bank account when it  
4 should have been sent to the fund. That's  
5 what that means.

6 Q. So let me ask you this; in  
7 your work have you ever -- with the SEC  
8 or otherwise -- have you had any other  
9 cases where you've done a calculation  
10 regarding perceived deficit and shares?

11 A. Yes.

12 Q. How many times?

13 A. All the times. This is what  
14 we were taught from day one when I  
15 started working here, going out to  
16 Registered Investment Advisor.

17 Q. And you are saying here there  
18 is a share shortfall of 14 million,  
19 right?

20 A. Yes.

21 Q. And that's concerning --  
22 sorry. That's concerning seven -- sorry  
23 -- seven current offerings?

24 A. Yes.

25 Q. And as we discussed earlier,

1 DOUGLAS J. SMITH

2 just for the record, you understand that  
3 there's currently 17 current offerings?

4 MR. GREENWOOD: Objection to  
5 form.

6 A. There's -- yeah, there's about  
7 24, I think, pre-IPO companies since they  
8 started, yes.

9 Q. Okay. So just to be clear,  
10 from your understanding how many  
11 offerings are -- let's back up.

12 There's some offerings where  
13 the stock, the companies went public,  
14 correct?

15 A. Yes.

16 Q. Okay. And do you know how many  
17 of the 24 have already gone public?

18 A. I think five or six.

19 Q. So if you have that  
20 excluded -- I'm just trying to understand  
21 how many current offerings -- let me say  
22 it a different way.

23 Are you aware there are ten  
24 current offerings, other than the seven  
25 you identified, where there's a share



1 DOUGLAS J. SMITH

2 deficit?

3 A. I'm confused. I don't  
4 understand the question.

5 Q. Okay. I'm going to walk you  
6 through each offering.

7 Do you understand that besides  
8 the seven you identified there are other  
9 offerings that are currently out there  
10 for StraightPath?

11 A. Yes.

12 Q. Okay. And you said you looked  
13 to determine, you know, the surplus or  
14 deficit in each offering, correct?

15 A. Yes.

16 Q. Okay. I'm going to start with  
17 Triller.

18 How many shares did you  
19 calculate that you have a surplus on on  
20 Triller, meaning they have more than they  
21 sold?

22 MR. GREENWOOD: Objection to  
23 form.

24 A. I don't know off the top of my  
25 head. I did this analysis and I did it

1 DOUGLAS J. SMITH  
2 over time too. My analysis in the  
3 declaration is just looking at the  
4 deficit as of today, and that's at least  
5 a figure because we have 17 million  
6 that's unaccounted for, so that deficit  
7 could grow and there could be other  
8 pre-IPO companies with deficits.

9 Q. Or the deficit could shrink?

10 A. I don't -- I don't understand  
11 how that could happen, unless they send  
12 funds now to purchase that I don't know  
13 about.

14 Q. So with respect to Triller, to  
15 confirm, that was one of the companies,  
16 one of the offerings, you know, again,  
17 that StraightPath has out there that you  
18 assessed whether or not there was a share  
19 shortfall, correct?

20 A. Yes.

21 Q. And there is, in fact, a  
22 surplus with Triller, correct?

23 A. I would have to go back and  
24 look but also not a complete picture  
25 because there's still 17 million that's

1 DOUGLAS J. SMITH

2 unaccounted for that could be for  
3 Triller. So until I do that analysis I  
4 can't say for certain whether there's a  
5 surplus today.

6 Q. Where is this analysis?  
7 Because we haven't seen it.

8 A. As I said before, it's -- I do  
9 it all in Excel.

10 Q. Okay. And you didn't attach --  
11 just to understand, you did not attach  
12 any information showing the analysis of  
13 Triller for your -- to your declaration,  
14 correct?

15 A. No.

16 Q. And but you have an Excel  
17 spreadsheet showing that information,  
18 correct?

19 A. Yes.

20 Q. And that's information that  
21 could be copied and produced, correct?

22 MR. GREENWOOD: Objection to  
23 form.

24 A. Yes.

25 Q. Okay. But to confirm, just to

1 DOUGLAS J. SMITH

2 round this out, and we'll go through each  
3 one, at this point in your analysis  
4 Triller had a surplus?

5 MR. GREENWOOD: Objection to  
6 form.

7 A. I don't know one way or the  
8 other.

9 Q. It's not a deficit or it would  
10 have been in your report, correct?

11 A. I still have \$17 million  
12 unaccounted for, so I can't say for  
13 certain yes or no.

14 Q. Triller is not in your report  
15 regarding the deficits, correct?

16 A. Correct.

17 Q. Chime, you reviewed that  
18 offering, that's a private company that  
19 StraightPath has an offering for, you  
20 reviewed that offering?

21 A. I reviewed all of them, yes.

22 Q. Okay. So with Chime, from your  
23 calculation currently -- I understand  
24 we're going to set aside the 17 because I  
25 want to know what you've done, because

1 DOUGLAS J. SMITH

2 you spent time, you did this analysis,  
3 you finished the declaration, you signed  
4 it last week -- from your analysis today,  
5 what's the surplus of Chime?

6 A. I don't know. I would have to  
7 go back to my analysis.

8 Q. But sitting here today,  
9 recognizing you don't know what's  
10 happening with the 17 million, Chime is  
11 not showing a deficit, correct?

12 A. Correct.

13 Q. DataMinr, are you familiar  
14 with that stock or that company?

15 A. Yes.

16 Q. Okay. So for DataMinr, that is  
17 a company that is part of an offering  
18 that StraightPath has for DataMinr  
19 pre-IPO shares, correct?

20 A. Yes.

21 Q. And you did a review to  
22 determine whether DataMinr is -- had a  
23 deficit, as of today, had a deficit --  
24 sorry -- as of when you did your  
25 declaration had a deficit in shares sold

1 DOUGLAS J. SMITH

2 versus purchased, right?

3 A. Yes.

4 Q. And sitting here today, based  
5 on your analysis, DataMinr -- there is no  
6 oversell with DataMinr?

7 A. I don't know, if -- if that 17  
8 million is accounted for that, I don't  
9 know yes or no.

10 Q. Okay. But sitting here today,  
11 in your analysis DataMinr is not -- based  
12 on what your analysis is today, DataMinr  
13 is not oversold, correct?

14 A. Correct.

15 Q. Flexport, are you familiar  
16 with that company?

17 A. Yes.

18 Q. Sorry. I have to go through  
19 each of these.

20 So for Flexport, are you  
21 familiar that had pre-IPO shares?

22 A. Yes.

23 Q. Did you conduct an analysis of  
24 whether Flexport -- whether StraightPath  
25 was oversold on Flexport?

1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Sitting here today, based on  
4 your analysis, Flexport is not oversold,  
5 correct?

6 A. Yes.

7 Q. Okay. Zebra, are you familiar  
8 with that company?

9 A. Yes.

10 Q. Okay. Sitting here today, do  
11 you remember doing an analysis of Zebra  
12 -- the Zebra offering for StraightPath?

13 A. Yes.

14 Q. Okay. And sitting here today,  
15 Zebra, from wherever your analysis is  
16 today, is not oversold, correct?

17 A. Yes.

18 Q. And but just to kind of cover  
19 each of the last ones, for Zebra,  
20 Flexport, DataMinr, Chime and Triller,  
21 sitting here today, you don't know what  
22 the extra shares is based on your  
23 analysis today, you don't remember?

24 A. It's not that I don't  
25 remember. I just don't have the data to

1 DOUGLAS J. SMITH

2 do it.

3 Q. You have the data, it's just  
4 not in front of you, correct?

5 A. I'm talking about the 17  
6 million.

7 Q. I'm not talking -- sorry. Go  
8 ahead.

9 A. Okay.

10 Q. I didn't mean to interrupt.

11 A. So that's what I'm referring  
12 to. And I can't say they're based on the  
13 analysis today without having 17 million  
14 unaccounted for, they're not in the  
15 deficit column.

16 Q. Okay. Klarna, do you know the  
17 name Klarna?

18 A. Yes.

19 Q. Okay. And that was, just to  
20 confirm, another offering of StraightPath  
21 for pre-IPO shares of Klarna, correct?

22 A. Yes.

23 Q. And just to kind of  
24 short-circuit, that is another one that's  
25 not in the deficit column, sitting here



1 DOUGLAS J. SMITH

2 today, correct?

3 A. Correct.

4 Q. Meaning, based on your  
5 analysis today they're not oversold?

6 A. Yes.

7 Q. Okay. Plaid, have you heard  
8 of that company?

9 A. Yes.

10 Q. Okay. So with respect to  
11 Plaid, do you know that -- do you  
12 understand or did you do an analysis of  
13 StraightPath's offering in connection  
14 with pre-IPO shares of Plaid?

15 A. Yes.

16 Q. And sitting here today, Plaid  
17 is not in your deficit column, correct?

18 A. Correct.

19 Q. Meaning, based on your  
20 analysis today, Plaid is not oversold?

21 A. Yes.

22 Q. Okay. SpaceX, you know that  
23 company?

24 A. Yes.

25 Q. Okay. Did you do an analysis

1 DOUGLAS J. SMITH

2 of StraightPath's offering related to  
3 pre-IPO of SpaceX?

4 A. Yes.

5 Q. Okay. And sitting here today,  
6 SpaceX is not in your deficit column,  
7 correct?

8 A. Correct.

9 Q. Meaning that as of today,  
10 based on your analysis today, SpaceX is  
11 not oversold?

12 A. Yes.

13 Q. Okay. ThoughtSpot, do you know  
14 that company?

15 A. Yes.

16 Q. Did you do an analysis of  
17 ThoughtSpot, as far as the StraightPath's  
18 offering of those pre-IPO shares?

19 A. Yes.

20 Q. And sitting here today,  
21 ThoughtSpot is not in the deficit  
22 category, correct?

23 A. Correct.

24 Q. Meaning as of today, based on  
25 your analysis today, ThoughtSpot is not

1 DOUGLAS J. SMITH

2 oversold?

3 A. Correct.

4 Q. And with Zipline -- last one,  
5 I know this has been fun -- Zipline is a  
6 company you are familiar with, correct?

7 A. Yes.

8 Q. You did an analysis of  
9 StraightPath's offering on pre-IPO shares  
10 of Zipline, correct?

11 A. Yes.

12 Q. And Zipline is not in the  
13 deficit category, correct?

14 A. Correct.

15 Q. And so based on your analysis  
16 today, Zipline is not oversold?

17 A. Yes.

18 Q. Okay. So just to be clear, I  
19 think we've touched on this but I want to  
20 make sure I don't misremember that -- as  
21 we talked about earlier, you've estimated  
22 that StraightPath has at least 200  
23 million, but possibly more, in current  
24 assets and stock, correct?

25 A. Yes.

1 DOUGLAS J. SMITH

2 Q. So it's true that StraightPath  
3 could have more than enough assets to  
4 cover what you see as a perceived \$14  
5 million shortfall?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. I don't know.

9 Q. Well, if they have -- there's  
10 200 million in assets, isn't it true that  
11 some of those assets could be  
12 StraightPath's for their fees?

13 A. Yes, but they're -- they are  
14 funds sent for other pre-IPO companies,  
15 they're not in the companies that have a  
16 deficit. So unless you transfer over,  
17 you know, money that you've already paid  
18 for other shares to purchase the deficit  
19 ones, sure.

20 Q. So if StraightPath  
21 inadvertently sold -- oversold there is  
22 enough assets to basically go out and  
23 acquire the shares so there's no more  
24 shortfall, correct?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 A. No.

4 Q. They can't go out and acquire  
5 shares -- sorry -- they can't go out and  
6 acquire shares to cover the deficit?

7 A. So you've already sold shares  
8 to an investor that you haven't bought.  
9 How do you -- you can do that afterwards  
10 and say; you know, oh, I have them after  
11 I sold them to you.

12 Q. I'm sorry. Keep going. I  
13 apologize.

14 A. I'm finished.

15 Q. I'm making a simple point.  
16 There's at least 200 million in assets at  
17 StraightPath and, correct, that what  
18 we've talked about kind of numerous  
19 times, correct?

20 A. Yes.

21 Q. Okay. And my simple point is  
22 that what you've calculated at this point  
23 is \$14 million in deficit, roughly,  
24 correct?

25 A. Yes.

1 DOUGLAS J. SMITH

2 Q. Okay. And some of that \$200  
3 million is StraightPath's money, correct,  
4 or stock, correct?

5 MR. GREENWOOD: Objection to  
6 form.

7 A. They're shares that that they  
8 purchased for the investors.

9 Q. You're not aware, sitting here  
10 today, that some of that -- that some of  
11 the assets in StraightPath is actually  
12 owned by StraightPath in forms of fees or  
13 carried interest?

14 MR. GREENWOOD: Objection to  
15 form.

16 A. I don't know.

17 Q. Okay. So sitting here today,  
18 you have no idea how much of the 200  
19 million is actually StraightPath's  
20 assets, meaning not investor assets?

21 A. It's my understanding that  
22 those are all belonging to investors. And  
23 I think what you are referring to is if  
24 it goes IPO and there is some kind of  
25 profit or loss that's, you know, what

1 DOUGLAS J. SMITH

2 you're referring to.

3 So I haven't looked at that. I  
4 don't know what that is. But that's a  
5 hypothetical based on all of these going  
6 IPO.

7 When they're pre-IPO they're  
8 pledged to the investors that are sending  
9 money to StraightPath. You can't just  
10 move funds from one issuer to another to  
11 account for these deficits.

12 Q. Just to be clear, we've just  
13 walked through a number of stocks that,  
14 sitting here today, based on your current  
15 calculation, StraightPath has more stock  
16 than they sold, correct?

17 MR. GREENWOOD: Objection to  
18 form.

19 A. As of today.

20 Q. Right. So all I'm saying is  
21 that StraightPath -- you don't know,  
22 sitting here today, how much of the 200  
23 million is actually owned by  
24 StraightPath? Meaning, it's not  
25 investors, since they have stock that

1 DOUGLAS J. SMITH

2 you've already said is more than has been  
3 sold.

4 MR. GREENWOOD: Objection to  
5 form.

6 A. I don't understand the  
7 question.

8 Q. StraightPath, bottom line, has  
9 an inventory in excess of what has been  
10 sold, correct?

11 A. Umm, it has more shares than  
12 it sold.

13 Q. So do you understand that  
14 there are --

15 MR. GREENWOOD: Hold on. Hold  
16 on.

17 A. I don't really understand --

18 MR. GREENWOOD: Let him finish  
19 his answer.

20 A. -- the question because  
21 inventory, you know, accounts should be  
22 zeroed out.

23 So we're referring to -- you  
24 know, at any point in time there's  
25 surpluses and deficits and those change



1 DOUGLAS J. SMITH

2 day by day. For all of these pre-IPO  
3 issuers they always had a deficit at one  
4 point in time. What my analysis shows is  
5 that they have -- here is the deficit as  
6 of today.

7 Q. Let's try and make this clear.

8 When you say "deficit", you're  
9 talking about oversell on a certain  
10 number of offerings, correct?

11 A. Yes. And --

12 Q. And we walked -- go ahead.

13 MR. GREENWOOD: Let him  
14 finish.

15 A. -- they've taken money in from  
16 investors that they have no shares for.  
17 That happened from day one in the bank  
18 records.

19 Q. And you -- I'm sorry. Go  
20 ahead.

21 We just went through ten  
22 stocks that there is no deficit as of  
23 today, correct?

24 A. Yes.

25 Q. Do you understand that

1 DOUGLAS J. SMITH

2 StraightPath buys stock it inventories it  
3 and, therefore, can have stock it owns  
4 that it has not yet sold to investors,  
5 correct?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. I don't know.

9 Q. You have no idea how  
10 StraightPath runs its business?

11 MR. GREENWOOD: Objection to  
12 form.

13 A. No. I do not work there an  
14 it's commingled and it's a commingled  
15 account, so you have to look at it  
16 holistically enterprise-wide.

17 Q. So when you look at  
18 StraightPath, if it has, for example,  
19 300,000 shares of Triller it has not  
20 sold, it can go out in the market right  
21 now and sell its shares and have money,  
22 correct?

23 A. I've seen instances where  
24 they've used other investor money to  
25 purchase shares that they didn't want to

1 DOUGLAS J. SMITH

2 buy.

3 So what I'm saying is, this is  
4 a whole big commingled mess. And I think  
5 you're asking questions that do not  
6 really make sense to me because it's all  
7 commingled.

8 Q. I'm asking a simple question.

9 If there is Triller and they  
10 have 300,000 extra shares that has not  
11 been sold, yes or no, they could go out  
12 and sell those 300,000 shares, correct?

13 MR. GREENWOOD: Objection to  
14 form.

15 A. So they're not putting any of  
16 their own money into these bank accounts  
17 to purchase the shares. The funds are  
18 coming from the investors to purchase the  
19 shares. So in my mind StraightPath  
20 doesn't own these shares. You know, it's  
21 not using its own money. The investors  
22 are sending money to purchase the shares.

23 Q. So what you're saying -- what  
24 you're saying in your analysis, you have  
25 actually -- you're telling me that you've

1 DOUGLAS J. SMITH

2 never seen in all the bank records that  
3 StraightPath actually used money that it  
4 received from fees or anything and  
5 purchased stock, StraightPath never used  
6 money that was its to purchase stock;  
7 that's what you're saying?

8 MR. GREENWOOD: Objection to  
9 form.

10 A. At the time they could have.  
11 But what they're taking out at the end of  
12 the day and paying themselves to third  
13 parties is the difference between what  
14 they're buying from third parties and  
15 what they're selling to investors.  
16 They've taken all that money, so I don't  
17 agree with that.

18 Q. You just said, during your  
19 long statement, that StraightPath has  
20 used at times its own money to buy stock.  
21 And what I'm asking is --

22 A. No, I didn't say that. Sorry.

23 Q. It's a very simple question,  
24 and I know you're talking around it, but  
25 I need a simple answer to a simple

1 DOUGLAS J. SMITH

2 question.

3 StraightPath, if it has  
4 300,000 shares -- it's a yes or no -- if  
5 StraightPath has 300,000 shares of  
6 Triller it has not sold to investors, it  
7 could go out today and sell that stock  
8 and have cash from that sale, correct?

9 MR. GREENWOOD: Objection to  
10 form.

11 Q. Yes or no?

12 MR. GREENWOOD: You've asked  
13 this three or four times.

14 MR. SHERMAN: I asked it. He  
15 hasn't answered it.

16 A. No.

17 Q. It can't go out and sell  
18 Triller today if they had excess  
19 inventory, that's not possible?

20 MR. GREENWOOD: Objection to  
21 form.

22 A. They're selling -- they're  
23 selling the shares to investors. So  
24 they're taking in money before they make  
25 those purchases. So your hypothetical

1 DOUGLAS J. SMITH

2 doesn't make sense to what happened.

3 Q. No. You're not answering the  
4 question, sir.

5 Triller, I am making a  
6 statement that they have 300 shares  
7 currently in inventory beyond what has  
8 been sold. With that understanding I'm  
9 asking you; could they not go out with  
10 that 300,000 shares they have, not shares  
11 they don't have, but shares they have and  
12 go sell them and make money today, could  
13 they not do that, sir?

14 MR. GREENWOOD: Objection to  
15 form.

16 A. Those funds are belonging to  
17 investors. Investors sent in money for  
18 shares, so they belong to investors.

19 Q. And this is under your notion  
20 that StraightPath has never used its own  
21 money to purchase stock?

22 MR. GREENWOOD: Objection to  
23 form.

24 A. It's happened a very small  
25 amount of time in the past few months.

1 DOUGLAS J. SMITH

2 Q. So the past few months is the  
3 first time StraightPath ever used funds  
4 it got from fees or markup to pay for  
5 stock?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. StraightPath has already taken  
9 out the fees to pay itself, so I don't  
10 understand the question.

11 Q. So are you not aware of the  
12 fact that StraightPath gets fees,  
13 including markups and carried interest  
14 and uses that money to buy stock?

15 MR. GREENWOOD: Objection to  
16 form.

17 A. I don't understand the  
18 question because at the end of the day  
19 I'm looking at the analysis as of today,  
20 what do the bank records show.

21 Q. I'm asking a simple question.  
22 I'm not asking a broad-picture question  
23 of everything that you analyzed, I'm  
24 asking a simple question.

25 Are you aware of the fact that

1 DOUGLAS J. SMITH

2 StraightPath received fees in forms of  
3 various ways, whether it's carried  
4 interest or otherwise, and used that  
5 money to buy stock?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. I don't know. It's all  
9 commingled and there's Ponzi-like  
10 payments. And unless I can have more  
11 details, general ledgers and you know --  
12 you know, profit and loss statements,  
13 balance sheets to account for flows of  
14 funds, there is money moving amongst all  
15 of these bank accounts that are  
16 unaccounted for. They're just simple  
17 transfers.

18 So I guess what you're asking  
19 is; if I found it in a financial record,  
20 yes, I could say one way or the other but  
21 the internal records at StraightPath  
22 don't account for those scenarios.

23 Q. Because you've never done any  
24 -- back up.

25 You've done your own analysis



1 DOUGLAS J. SMITH

2 to see how much of each offering, such as  
3 Triller, how much stock they have,  
4 correct?

5 A. I don't understand the  
6 question.

7 Q. Okay. We just walked through  
8 ten stocks and you did an analysis  
9 whether it was a deficit or a surplus,  
10 correct?

11 A. I did an analysis of the  
12 inventory for every pre-IPO company since  
13 the beginning --

14 Q. Right.

15 A. -- on a daily running total.

16 Q. Right. And at this point,  
17 based on your analysis -- I'll do this  
18 one more time because I know you don't  
19 want to answer my question, but at the  
20 end of the day --

21 MR. GREENWOOD: Come on.

22 MR. SHERMAN: He's not  
23 answering the question, Lee.

24 MR. GREENWOOD: You've asked  
25 it three or four times.

1 DOUGLAS J. SMITH

2 MR. SHERMAN: Well, I'm asking  
3 it again. We don't have all day, so  
4 I'll move on.

5 Q. At the end of the day, sir, by  
6 way of example, if StraightPath currently  
7 has an inventory 300,000 shares of stock  
8 more than it has sold to investors, could  
9 it sell that stock to investors or could  
10 it not?

11 MR. GREENWOOD: Objection to  
12 form.

13 A. If it purchased the shares  
14 from itself and they sent funds to  
15 purchase the shares, yes.

16 Q. Okay. And then that -- then  
17 ultimately. That would be cash on hand  
18 which could be used to cover deficits  
19 from the stock that you've identified,  
20 correct?

21 A. I don't understand the  
22 question.

23 Q. If they have cash on hand from  
24 the sale of stock they own they could use  
25 that to cover the \$14 million deficit,

1 DOUGLAS J. SMITH

2 correct?

3 A. Right. But I would have to  
4 look at what the investors are sending  
5 their money for. Are they purchasing  
6 shares in that company that they're going  
7 to buy? I don't know.

8 Q. And you also understand, tell  
9 me if you don't, that StraightPath, in  
10 connection with this matter, when they  
11 learned of this action to be filed,  
12 agreed to put \$15 million in escrow to  
13 cover the shortfall? Are you aware of  
14 that fact?

15 MR. GREENWOOD: You can  
16 answer.

17 A. Yes.

18 MR. GREENWOOD: Whenever it  
19 makes sense to break for lunch,  
20 we've been going an hour and  
21 fifteen.

22 MR. SHERMAN: I think we can  
23 break, but there is a lot to get  
24 through. How long do you need?

25 MR. GREENWOOD: Do you want to

1 DOUGLAS J. SMITH

2 do this on the record?

3 MR. SHERMAN: We can go off  
4 the record.

5 VIDEOGRAPHER: Stand by. Off  
6 the record 1:18 p.m. This is the  
7 end of Media Unit 2.

8 (Lunch recess is taken.)

9 VIDEOGRAPHER: Going back on  
10 the record at 2:20 p.m. This is  
11 the beginning of Media Unit 3. You  
12 may proceed.

13 Q. Mr. Smith, this is Scott  
14 Sherman again from Nelson Mullins. You  
15 understand you're still under oath,  
16 correct?

17 A. Yes.

18 MR. SHERMAN: So just to put  
19 on the record from a discussion  
20 that I had with the SEC, Lee  
21 Greenwood, we understand that there  
22 are a number of documents, Excels,  
23 otherwise, that have been  
24 identified on a privilege log,  
25 including but not limited to

DOUGLAS J. SMITH

materials that relate to the 17 --  
roughly -- million dollar analysis  
you did and documentation related  
to the ten other stocks that you  
assessed that at the moment from  
your assessment don't have a  
shortfall.

In consultation with the SEC,  
they have agreed and have provided  
us one document just now, which we  
understand relates to the 17  
million. We have agreed to take  
that document with the -- and told  
them that we would not argue that  
because we received that one  
document that it was a  
subject-matter waiver on any other  
documents. It's by itself, just  
they've agreed to produce it and  
that will not be subject to any  
privilege.

We do reserve the right to  
contest all other documents that  
are on the privilege log and

1 DOUGLAS J. SMITH

2 reserve the right for additional  
3 testimony, as necessary.

4 So does that cover it, Lee?

5 MR. GREENWOOD: I largely  
6 agree to that, Scott. The SEC  
7 agrees with that representation.

8 To be clear, the SEC has  
9 asserted attorney work product over  
10 the spreadsheets that Mr. Smith  
11 filed during the course of this  
12 investigation and litigation, and  
13 continues to do so.

14 BY MR. SHERMAN:

15 Q. So now back to the question,  
16 question for you, just to understand,  
17 with respect to -- you know, there's the  
18 ten stocks we talked about that at this  
19 moment from your analysis you did not see  
20 a shortfall. Do you remember that  
21 testimony?

22 A. Yes.

23 Q. Okay. So when you created or  
24 did your analysis was each stock done  
25 under one spreadsheet or multiple

1 DOUGLAS J. SMITH

2 spreadsheets? Like, how did you do your  
3 analysis?

4 A. Multiple spreadsheets. But  
5 it's all, you know, based on one master  
6 spreadsheet of the bank record.

7 Q. Do you have separate tabs --  
8 sorry. I didn't mean to --

9 A. Yes. Separate tabs. There's,  
10 you know, pivot tables as well.

11 Q. Can you just, for the court,  
12 can you explain what is pivot table for  
13 me? I'm not an expert on Excel.

14 A. A pivot table, you just drag  
15 and drop the columns that you're  
16 assigning value to and the data run  
17 pivots around that information.

18 Q. So do you have a specific tab  
19 that, like, called "Triller"?

20 A. Yes. I have, for each IPO  
21 issuer I have the shares, total shares  
22 for each row and then the price.

23 Q. Okay. So ultimately, you could  
24 print out a spreadsheet solely showing  
25 what your calculation is today of total

1 DOUGLAS J. SMITH

2 shares purchased and sold, correct?

3 A. Yes.

4 MR. SHERMAN: Okay. And just  
5 to confirm for the record, that  
6 specific spreadsheet, Lee, you are  
7 claiming work product, on that sole  
8 spreadsheet which can be printed  
9 up, you are claiming work product  
10 at this time?

11 MR. GREENWOOD: I don't think  
12 he said that he has a spreadsheet  
13 for the ten stocks in the way  
14 you're describing it.

15 We are asserting work product,  
16 that Mr. Smith conducted the  
17 analysis at the direction of  
18 attorneys in anticipation of  
19 litigation.

20 As to that analysis and his  
21 spreadsheets that he's used to  
22 derive that analysis we've  
23 obviously provided you copies of  
24 the documents provided to the  
25 court, which provide a fair amount



1 DOUGLAS J. SMITH

2 of detail on exactly those issues  
3 that you're asking about, that is  
4 the share counts for the various  
5 deficit issuers. But for the  
6 remainder, yes, for the remainder  
7 we're asserting work product.

8 Q. And so just, Mr. Smith, for  
9 question on exhibits on Exhibits 3 and 4  
10 on shortfalls you took from this master  
11 spreadsheet and then you've -- you've  
12 included in your declaration the portion  
13 related to the stocks that are deficits,  
14 correct?

15 A. Yes, I created a separate  
16 spreadsheet. For all of my exhibits I  
17 created a separate spreadsheet.

18 Q. Right. But you could literally  
19 print off a single document that would  
20 show Triller; how much you show was  
21 purchased; how much you show as sold,  
22 correct?

23 A. I think -- I don't know. I  
24 would have to go back and look because  
25 it's a lot of information.

1 DOUGLAS J. SMITH

2 Q. Sure.

3 A. So, you know, I'm taking data  
4 from potentially more than one  
5 spreadsheet. I just I don't know.

6 Q. Okay. But you could isolate  
7 Triller information specific to  
8 calculating, like, showing the purchase  
9 total and the sale?

10 A. Yes, it's something that I can  
11 create.

12 Q. And then in doing that, the  
13 analysis, you considered that work that  
14 you did in determining what should go  
15 into your declaration and ultimate  
16 attachments, correct?

17 MR. GREENWOOD: Objection to  
18 form.

19 A. No.

20 Q. So when you were trying to  
21 determine which stocks may have a  
22 deficit, you looked at your spreadsheet  
23 information to determine that number,  
24 correct?

25 A. Yes.

1 DOUGLAS J. SMITH

2 Q. Okay. So in assessing the  
3 spreadsheets that we've been talking  
4 about, like Triller, at least in your  
5 calculations at that time, there were --  
6 there wasn't a deficit, right?

7 A. Correct.

8 Q. So you determined after  
9 reviewing that material for Triller not  
10 to include it in the materials here?

11 A. No.

12 Q. You didn't make a decision not  
13 to include Triller?

14 A. Correct.

15 Q. Okay. But you did, in looking  
16 at all of the information that you  
17 created, you did use that information for  
18 Triller and all the other stocks to  
19 determine which ones were deficits,  
20 correct?

21 A. I mean, it's really done on a,  
22 you know, a company-by-company basis, so  
23 I just looked at the ones that had a  
24 negative amount, and then I created an  
25 exhibit accordingly.

1 DOUGLAS J. SMITH

2 Q. And you understand that the  
3 SEC has only included deficit -- stocks  
4 that have companies that have deficits in  
5 their materials, including your  
6 declaration?

7 A. Yes.

8 Q. Okay. Moving on.

9 You had talked -- we talked at  
10 length about, like, the review of bank  
11 statements and that was your key focus. I  
12 just want to make sure I understand.

13 In reviewing the bank  
14 statements, do you have a total number  
15 from your analysis that was distributed  
16 to investors, the cash?

17 A. Investor distributions, yes.

18 Q. And do you know how much that  
19 is?

20 A. I would have to go look at my  
21 analysis, but I have that figure.

22 Q. Is it in your report?

23 A. No.

24 Q. Okay. Is it more than 10  
25 million?

1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Is it more than -- huh? Sorry?

4 A. I believe so, yes.

5 Q. Is it more than 50 million?

6 A. I think it's less than that.

7 Q. Okay. So what document would  
8 you have to look at to check that number?

9 A. It's on a pivot table, so I'm  
10 categorizing all inflows and outflows. So  
11 all investor distributions already have a  
12 figure.

13 Q. Right. So there's -- again,  
14 I'm no expert on Excel but some document  
15 could be from your spreadsheet, you know,  
16 master spreadsheet could be printed off  
17 that would show solely, like, a total of  
18 how much was distributed, right?

19 A. Yes.

20 Q. Okay. And so you think it may  
21 be less than 50? More than 40? Do you  
22 remember?

23 A. I don't know.

24 Q. Okay. But -- go ahead.

25 A. No. I mean, this is what I was

1 DOUGLAS J. SMITH  
2 referring to earlier in terms of, you  
3 know, money coming in from brokerage  
4 accounts, deducting that from investor  
5 distributions, as well as people turning  
6 their IPO profits into another pre-IPO  
7 company. So you would have to deduct  
8 those two categories to come up with the  
9 net figure in what you're, you know,  
10 asking me about.

11 Q. Okay. So when you look at all  
12 the cash sitting in the accounts, and you  
13 see stocks sitting in the accounts, you  
14 don't know for sure if every dollar,  
15 every stock is investors' cash or  
16 investors' stocks, correct?

17 A. So there's no stock in the  
18 bank account. So I'm not looking at  
19 stocks in accounts.

20 Q. Right. Because you haven't  
21 analyzed the brokerage statements, right?

22 Okay. So for cash, would you  
23 say you know or don't know whether every  
24 dollar that's sitting in there is  
25 investor dollars or StraightPath dollars,

1 DOUGLAS J. SMITH

2 as far as --

3 MR. GREENWOOD: Objection to  
4 form.

5 A. So we know all inflows and  
6 outflows and categories associated with  
7 that. So I have a running total of all  
8 investors, a running total of all money  
9 coming from brokerage accounts, which  
10 potentially represents IPO profits and  
11 carried interest. Those are the main two  
12 categories of inflows into the bank  
13 account.

14 Q. So in your analysis did you  
15 break out, accounting for fees and  
16 carried interest earned, how much of the  
17 car is StraightPath's?

18 A. No, but after doing an  
19 analysis, like I said just prior to this,  
20 you know, taking all money coming in from  
21 the brokerage accounts, deducting it from  
22 the investor distributions, as well as  
23 profits from IPO companies, we can easily  
24 determine a figure that would be  
25 representative of that.

1 DOUGLAS J. SMITH

2 Q. Okay. But without getting into  
3 your privileged communications, that was  
4 not your charge to actually assess how  
5 much -- what was investor money or what  
6 was StraightPath money?

7 MR. GREENWOOD: Let me just  
8 object. Like, you can ask him what  
9 he did or didn't do, but we're not  
10 going to get into --

11 MR. SHERMAN: Okay. That's  
12 fine.

13 Q. So to confirm you did not do  
14 that analysis, but you could do the  
15 analysis pretty easily about what cash is  
16 investor cash versus what cash is  
17 StraightPath's for fees and carried  
18 interest?

19 MR. GREENWOOD: Objection to  
20 form.

21 A. No. You know, I know inflows  
22 from investors and brokerage accounts,  
23 cash coming in. And the amounts, you  
24 know, that are coming in, other than  
25 that, are very minimal.



1 DOUGLAS J. SMITH

2 Q. So when you say that you could  
3 do a quick -- it wouldn't be hard to do  
4 an analysis, what analysis were you  
5 referring to?

6 A. So documenting all inflow of  
7 funds, money movements inflow and out and  
8 you're categorizing what's incoming into  
9 the bank accounts and what's going out,  
10 and pivot tables are able to easily  
11 summarize the amounts.

12 Q. And doing that could help show  
13 you ultimately how much went out to  
14 investors in cash, correct?

15 A. Yes.

16 Q. And it could also show you --  
17 that could also show you how much of the  
18 cash sitting in the account is in the  
19 accounts is StraightPath's for fees  
20 earned or carried interest?

21 MR. GREENWOOD: Objection to  
22 form.

23 A. No. I'm not doing that  
24 analysis. I don't -- I'm only looking at  
25 inflows of funds and outflows of funds.

1 DOUGLAS J. SMITH

2 How they're accounting for whether those  
3 are associated with fees or not, I don't  
4 know.

5 I do know the total amount of  
6 markups from what they purchased from  
7 third parties and what they sell to  
8 investors, I know that figure and that  
9 figure they've taken out more than that  
10 figure to pay themselves and the pay  
11 third-party finders.

12 Q. But to answer my question,  
13 you've not done the analysis to show how  
14 much of the cash sitting there or over  
15 time is actually StraightPath's cash at  
16 any point in time?

17 A. I know if StraightPath is  
18 putting in money, I can attribute that,  
19 yes.

20 Q. But besides --

21 A. Whether they're accounting for  
22 it in a specific way, I don't know but  
23 it's not in the general ledger.

24 Q. So besides markups, you can't  
25 account for any other fees or monies

1 DOUGLAS J. SMITH

2 earned by StraightPath, correct?

3 A. Correct.

4 Mr. Greenwood: Objection to  
5 form.

6 A. Correct. I didn't conduct  
7 that analysis.

8 Q. Say that again. You didn't  
9 what?

10 A. I didn't do that analysis.

11 Q. Okay. So we touched on this a  
12 little bit but I just want to understand  
13 because some of the stuff you had said  
14 earlier about knowledge and not having  
15 knowledge of certain things.

16 So when you were reviewing  
17 these documents up through even signing  
18 of your declaration were you aware that  
19 StraightPath was in the process of  
20 collecting and reviewing documents to  
21 produce to the SEC on this issue of  
22 whether it was oversell or not in any  
23 particular offering?

24 MR. GREENWOOD: It's a "yes"  
25 or "no" question. I don't want you

1 DOUGLAS J. SMITH

2 to go beyond that.

3 MR. SHERMAN: These are all  
4 kind of yes or no's.

5 A. Could you repeat it again?

6 Q. Yeah. Sorry.

7 Basically, were you aware that  
8 during, up until even right before the  
9 filing, were you aware that StraightPath  
10 was in the process of collecting or  
11 reviewing documents to produce to the SEC  
12 regarding a review of each offering and  
13 whether they were oversold? Were you  
14 aware of that; yes or no?

15 A. No.

16 Q. Okay. Did you know in  
17 connection with -- let's see.

18 And do you know that in  
19 connection with this review there was a  
20 discussion specific that StraightPath  
21 would audit each offering?

22 MR. GREENWOOD: Objection to  
23 form, foundation.

24 A. I don't know.

25 Q. Were you ever aware -- okay.

1 DOUGLAS J. SMITH

2 Were you aware that the SEC  
3 staff, basically less than two months  
4 ago, had asked StraightPath to start its  
5 audit with four stocks; Rubrik, East  
6 Just, Impossible Foods and Kraken?

7 MR. GREENWOOD: Objection to  
8 form. And again, yes or no.

9 A. Yes.

10 Q. You were aware of that?

11 A. Yes. I remembered that.

12 Q. Okay. Without getting into  
13 privileged discussions, were you asking  
14 for those audits?

15 MR. GREENWOOD: Objection. You  
16 are explicitly asking for  
17 privileged information.

18 MR. SHERMAN: I mean, I'm  
19 asking -- I could phrase it  
20 differently.

21 Q. I'm not asking for your  
22 conversation with him.

23 I'm asking did, in doing your  
24 review, did you believe at the time it  
25 would be helpful for you to see these

1 DOUGLAS J. SMITH

2 audits?

3 A. Yes.

4 Q. Okay. And do you understand  
5 that the audits were in process but could  
6 not be completed in light of the SEC  
7 filing this emergency relief?

8 MR. GREENWOOD: Objection to  
9 form, foundation.

10 A. I don't know.

11 Q. So you weren't aware, yes or  
12 no?

13 A. No, I don't know.

14 Q. Now, are you aware that in  
15 doing its review StraightPath  
16 self-reported to the SEC shortfalls in  
17 both Rubrik and Eat Just?

18 MR. GREENWOOD: Objection to  
19 form. It's a yes or no question.

20 A. Yes.

21 Q. Okay. And are you aware that  
22 with respect to Rubrik, Mr. Martinsen,  
23 were you aware whether Martinsen used his  
24 own funds to purchase additional shares  
25 of Rubrik to account for part of the

1 DOUGLAS J. SMITH

2 shortfall?

3 A. Yes. I do have it in one of  
4 my exhibits. It's in my declaration.

5 Q. And are you aware that  
6 Mr. Martinsen had lined up additional  
7 shares of Rubrik to finish taking care of  
8 the shortfall in Rubrik?

9 MR. GREENWOOD: Objection to  
10 form.

11 A. I don't know anything beyond  
12 what I have in my declaration. I don't  
13 know.

14 Q. Are you aware whether  
15 Mr. Martinsen -- whether Mr. Martinsen  
16 had lined up shares to take care of the  
17 shortfall of Eat Just?

18 MR. GREENWOOD: Objection to  
19 form.

20 A. I don't know.

21 Q. Are you aware that in February  
22 18, 2020 you have mentioned or noted, and  
23 we can go to it, that the investments by  
24 investors stopped as of February 18,  
25 2020; are you aware of that?

1 DOUGLAS J. SMITH

2 MR. GREENWOOD: Objection to  
3 form. I think you are getting the  
4 date wrong on that, Scott.

5 MR. SHERMAN: What did I say  
6 February 18 --

7 MR. GREENWOOD: You said 2020,  
8 I think it's 2022.

9 Q. Sorry. 2022. Let me rephrase.  
10 On Exhibit 4, where you have  
11 calculation of investments in the funds,  
12 there is no investments after February  
13 18, 2022, correct?

14 MR. GREENWOOD: Let the  
15 witness pull up the document.

16 MR. SHERMAN: That's fine.

17 MR. GREENWOOD: And Scott,  
18 while he's doing that, did you mark  
19 the entire declaration with  
20 exhibits as Exhibit 1 or not?

21 MR. SHERMAN: We should have.  
22 Joshua. Did we do that?

23 MR. LEWIN: No. The exhibit is  
24 -- the exhibits are all separate.  
25 Any time you want to me to put in,



1 DOUGLAS J. SMITH

2 we can put the whole thing in and  
3 replace it as one. It's a large  
4 document.

5 MR. SHERMAN: Go ahead, Lee.

6 MR. GREENWOOD: It's up to  
7 you. I would have no objection to  
8 you introducing it as a single  
9 exhibit, the entire declaration  
10 plus exhibits, just so it's all  
11 there.

12 MR. SHERMAN: Let's do that.  
13 We'll replace it. We'll figure it  
14 out off record about how to do  
15 that. But for the record, we'll  
16 make Exhibit 1 the full declaration  
17 and exhibits.

18 MR. GREENWOOD: Okay.

19 Q. So let's get back. I should  
20 have asked, you can you pull up Exhibit  
21 4, have you looked at Exhibit 4 to your  
22 declaration?

23 A. Yes.

24 Q. Okay. And in that it shows  
25 that there are no investments from

1 DOUGLAS J. SMITH  
2 investors into any StraightPath Fund  
3 after February 18, 2022, correct?

4 A. Yes.

5 Q. Okay. And you're aware -- were  
6 you aware at that time that StraightPath  
7 had voluntarily agreed to a standstill  
8 while they worked through the issues with  
9 the SEC?

10 MR. GREENWOOD: Objection to  
11 form.

12 A. I know about the standstill  
13 agreement, yes.

14 Q. And that it went into place in  
15 February 18, 2022?

16 A. That sounds right. I don't  
17 know.

18 Q. And as we discussed earlier --  
19 you know, you agree that since that time  
20 you have seen no distributions of cash or  
21 stock to any Defendant, correct?

22 MR. GREENWOOD: Objection to  
23 form.

24 A. Just from the bank account I  
25 just saw one distribution but from the

1 DOUGLAS J. SMITH

2 brokerage accounts I don't know. I  
3 haven't looked there.

4 Q. When you say you saw a  
5 distribution, I'm saying to the  
6 Defendants, not distributions to anyone.  
7 Let me rephrase.

8 Earlier you testified that  
9 there was one distribution from the bank  
10 account that went to an investor,  
11 correct?

12 A. Yes.

13 Q. Okay. Do you understand that  
14 -- so you didn't look -- you did not look  
15 at the brokerage account, so you can't  
16 speak at all to the stock distributions  
17 of any two investors at all after  
18 February 2022 or otherwise?

19 MR. GREENWOOD: Objection to  
20 form.

21 A. Yes. I didn't -- I didn't do  
22 any analysis in that regard.

23 Q. Okay. So just to kind of give  
24 dates and. So in late March,  
25 StraightPath -- were you aware that

1 DOUGLAS J. SMITH

2 StraightPath self-reported to the SEC  
3 that it was acquiring more Rubrik shares  
4 because investors had contributed more  
5 than they had, basically, that there was  
6 a potential shortfall?

7 MR. GREENWOOD: Objection to  
8 form.

9 A. I don't know.

10 Q. Okay. Let me show you an  
11 exhibit. It's a March 30th, 2022 email.

12 Josh, you want to pull that  
13 up?

14 (Defendant's Exhibit 5, email  
15 dated March 30, 2022, re: Rubrik  
16 Acquisition, was received and  
17 marked on this date for  
18 identification.)

19 Q. So this is Exhibit 5, it's an  
20 email, it's not Bates labeled, but it's  
21 an email from Meghan Genet from March  
22 30th, 2022. You're not on this email but  
23 I want to speak to a specific issue.

24 Now, do you see bullet point  
25 2?

1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Can you read that paragraph  
4 and let me know when you're done?

5 And I'll just say for the  
6 record it says, "The staff has reviewed  
7 the document StraightPath identified  
8 concerning Rubrik's share acquisition,  
9 see Bates numbers below. The general  
10 ledger for StraightPath Venture Partners  
11 LLC reflects the acquisition of 899,061  
12 shares of Rubrik 575,484, which are  
13 substantiated to one degree or another by  
14 the documents identified in counsel's  
15 March 16, 2022 email. However, the  
16 investor list reflects SP Ventures Funds  
17 1 through 9 have sold about 1,749,435  
18 shares of Rubrik." Do you see that?

19 A. Yes.

20 Q. Were you involved in that  
21 calculation of the 1,749,435?

22 MR. GREENWOOD: I'll object  
23 and instruct the witness not to  
24 answer. I mean, you can ask him  
25 whether he conducted such

1 DOUGLAS J. SMITH  
2 calculations at the same time and  
3 whether or not they were the same  
4 or different than what is described  
5 in the email, but we're not going  
6 to get -- we're not going to do  
7 questions --

8 MR. SHERMAN: That's not a  
9 privileged communication. This is  
10 a, did he -- did he make that --  
11 remember this is a number that's  
12 been presented. I'm asking; did he  
13 come up with that number?

14 I'm allowed to ask that  
15 question. I'm not asking him the  
16 conversations about it.

17 MR. GREENWOOD: Can you  
18 restate the question?

19 Q. There is a number 1,749,435  
20 shares, I'm just asking did you do that  
21 calculation?

22 A. No.

23 Q. Is this the first time you've  
24 seen that number?

25 A. Yes.

1 DOUGLAS J. SMITH

2 Q. Now, just to be clear, if you  
3 look back at Exhibit 4 of your --  
4 sorry -- Exhibit 4 of your declaration.  
5 I saw you looking at the computer.

6 A. Yes. Okay.

7 Q. You had a number of 106,830  
8 shares of Rubrik sold, right? And just  
9 let me know once you get there.

10 A. Okay.

11 MR. GREENWOOD: Is there a  
12 specific page you can direct him  
13 to?

14 MR. SHERMAN: Josh, do you  
15 know which page it is?

16 MR. LEWIN: Yeah. If you look  
17 at page 146 of 166, that would show  
18 you the end of the Rubrik  
19 calculations.

20 THE WITNESS: Oh, the end.  
21 Okay. I see it.

22 Q. Okay. So do you know -- well,  
23 I'll ask; have you ever -- I guess  
24 sitting here today, do you know why  
25 there's a difference between the 1.7

1 DOUGLAS J. SMITH

2 million in the email and the 1,069,000  
3 that you calculated?

4 A. I don't know. I didn't do that  
5 work that is in the email.

6 Q. Okay. So are you aware whether  
7 after StraightPath or before StraightPath  
8 self-reported on Rubrik whether the SEC  
9 ever identified to StraightPath any  
10 perceived shortfalls in stock?

11 MR. GREENWOOD: Objection to  
12 form.

13 A. I don't know.

14 Q. When did you first, from your  
15 analysis, learn that there may be -- or  
16 from your calculation there were  
17 shortfalls in any particular stock?

18 A. In the very beginning, when I  
19 was looking at bank records for Palantir,  
20 they were taking in money from investors  
21 and they didn't purchase shares from a  
22 third party, so going back to 2017.

23 Q. Just to confirm, Palantir is  
24 not -- okay, I'm -- I'm trying to  
25 understand. Let me rephrase.



1 DOUGLAS J. SMITH

2 You got a declaration that  
3 references seven stocks, right?

4 A. Yes.

5 Q. But you did an analysis of all  
6 24 stocks' stock offerings, correct?

7 A. Yes.

8 Q. So with respect to the  
9 offerings where you saw perceived  
10 shortfall, you're saying that you thought  
11 there may be a shortfall back as August  
12 of last year?

13 A. No, 2017, from the very  
14 beginning of the bank records.

15 Q. No, I apologize. I don't mean  
16 the time of when there was a shortfall.

17 A. Oh.

18 Q. I'm talking about -- let me  
19 rephrase. Just for a clear record.

20 You reviewed all 24 offerings,  
21 with respect --

22 A. Yes.

23 Q. -- with respect to whether  
24 there was a shortfall?

25 A. Yes.

1 DOUGLAS J. SMITH

2 Q. And you're saying that you --  
3 from your analysis of bank records you  
4 thought there may be a shortfall of some  
5 -- initial shortfall as early as August  
6 in your analysis when you were doing it,  
7 as early as August 2021?

8 A. Yes. It could have been that  
9 early. I remember seeing it.

10 Q. Okay. So with respect to the  
11 seven offerings now, do you recall when  
12 you first recognized a potential  
13 shortfall of any of the seven?

14 A. This would be very recently  
15 because this work was a lot of work and  
16 so -- you know, and I'm only one person.  
17 So, you know, I mean, it was very recent.

18 Q. So, like, February?

19 A. No. It would probably be May.

20 Q. So you're saying before May --  
21 besides completing your analysis -- I'm  
22 talking about any perceived shortfalls.

23 So I just want to make sure, I  
24 just want to make sure that when you  
25 first determined there may be a shortfall

1 DOUGLAS J. SMITH

2 in the seven, can you give me, as best  
3 you can recall, when you thought when any  
4 one of the seven may be short?

5 MR. GREENWOOD: Objection to  
6 form.

7 A. I don't -- I don't understand  
8 the question because all of the issuers  
9 had shortfalls throughout time. So I was  
10 just trying to do all of the work and  
11 categorizing things accurately and  
12 finding information as best as I could.  
13 And at the end of the day, this is --  
14 these are the ones with the deficits as  
15 of today.

16 Q. So you're saying in the last,  
17 what, two weeks is the first you  
18 concluded that there was any shortfall?

19 MR. GREENWOOD: Objection to  
20 form.

21 A. So we're using, you know,  
22 specific dates of the shortfall. The  
23 shortfalls were throughout time that I'm  
24 reviewing the bank records, right,  
25 starting as early as 2017. The very

1 DOUGLAS J. SMITH

2 first deposit into a bank account I saw  
3 it there, and it fluctuates every time  
4 for every IPO company. And at the end of  
5 the day, if we're looking at a specific  
6 date. Like we are in my declaration,  
7 these are the ones with the deficits.

8 Q. Okay. But I'm just trying to  
9 understand that while there may be  
10 various inflows and outflows, if it was  
11 just in the last two weeks that you  
12 determined that there was, as you viewed  
13 it, a shortfall on these seven or if it  
14 was at some earlier time for any one of  
15 them?

16 A. There's an inventory of every  
17 pre-IPO company and that changes over  
18 time.

19 Q. So let me ask a different way.  
20 For any one of the seven,  
21 prior to May, did you believe there was a  
22 shortfall?

23 A. Yes. At various points in  
24 time there are shortfalls for all IPO  
25 companies.

1 DOUGLAS J. SMITH

2 Q. Dating back to the fall?

3 A. Dating back as early as 2017.

4 Q. When I say "dating back to the  
5 fall", I mean dating back to the fall of  
6 2021 in your analysis, you first  
7 perceived a shortfall of these seven  
8 dating back to the fall of 2021?

9 MR. GREENWOOD: Objection to  
10 form.

11 A. Yes.

12 Q. Okay. Are you aware that  
13 StraightPath first learned of the SEC's  
14 claim with respect to these seven only at  
15 the time that the TRO was filed?

16 A. No.

17 MR. GREENWOOD: Objection to  
18 form.

19 A. I don't know.

20 Q. Okay. Let's turn to paragraph  
21 21. So 21 says, "In order to calculate  
22 the number of Series Interest in pre-IPO  
23 shares sold I also reviewed bank records  
24 which show the actual investments by  
25 investors and cross-referenced those

1 DOUGLAS J. SMITH  
2 amounts with other documents produced by  
3 the SP Fund Manager or otherwise obtained  
4 by the Commission staff during its  
5 investigation."

6 So when you say that you  
7 reviewed bank records, these are the ones  
8 we've been talking about for the two  
9 banks that were with StraightPath,  
10 Signature and JPMorgan?

11 A. Yes.

12 Q. What are the other documents  
13 produced that you reviewed? Can you give  
14 me some level of understanding?

15 A. Yes. It's everything in  
16 paragraph 5.

17 Q. Oh. So any more detail than  
18 just the summary of every document you  
19 reviewed? I'm just trying -- I'm being  
20 specific to this paragraph 22. Let me  
21 rephrase.

22 I understand you looked at  
23 various documents over the course of  
24 time, but I'm trying to understand what  
25 documents you looked at related to

1 DOUGLAS J. SMITH

2 paragraph 21, other than the bank  
3 records.

4 A. They would be investor lists,  
5 the inventory spreadsheets, agreements  
6 with third parties before they're  
7 purchasing the shares, the detail, you  
8 know, the amount of shares they're  
9 purchasing, at what price, the fees,  
10 stripping out all the fees.

11 Q. And then did you ever have a  
12 discrepancy between these sources of the  
13 various documents? I mean, was there ever  
14 -- let me rephrase.

15 In looking at these documents,  
16 did you ever have a document that said  
17 one thing but it was potentially  
18 contradicted by another document you  
19 looked at?

20 A. Yes.

21 Q. Okay. And how did you resolve  
22 that, what I call a discrepancy?

23 A. So I would account for the  
24 actual inflow or outflow that's coming  
25 out and do the math, so making sure that

1 DOUGLAS J. SMITH

2 the shares match up with the price and  
3 the money that's coming in or going out  
4 it, matches up.

5 Q. Where are the documents  
6 showing your calculation of investor  
7 purchases?

8 A. That would be in my master  
9 spreadsheet, Excel spreadsheet.

10 Q. Okay. So that's a -- is that  
11 another -- what's the thing you called  
12 it, there's tabs and I'm trying to think  
13 of the name. When you look at the master  
14 spreadsheet is it something that you  
15 could pretty much, I mean, like, create a  
16 print-off of all the purchases or whatnot  
17 from Excel?

18 A. Yes. Yes. There's pivot tables  
19 based on whatever value you're assigning  
20 for each row.

21 Q. Okay. And so that's in the  
22 master spreadsheet. When we say master --  
23 just so I understand, there is a master  
24 spreadsheet that has various, you know,  
25 tabs and the rest, right?



1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Are there other spreadsheets  
4 too?

5 A. Yes. There could be, yes.

6 Q. Can you identify what other --  
7 I mean, I know we're just calling it  
8 master, but just try to describe what  
9 other spreadsheets you have that relate  
10 to your work?

11 A. Yes. So investors are using  
12 their IPO proceeds to invest in a new  
13 pre-IPO issuer, that doesn't -- it's not  
14 reflected in the bank records, right? I  
15 can't account for any inflows or outflows  
16 there, so I created a separate  
17 spreadsheet that accounts for that.

18 Q. Any other spreadsheets?

19 A. Not that I can recall.

20 Q. I think we've touched on this  
21 but just to confirm. If you look at  
22 paragraph 22 of your document it says,  
23 "Based on these documents, I created  
24 various schedules, comparing the pre-IPO  
25 shares that the SP Fund Manager purchased

1 DOUGLAS J. SMITH

2 including both price and quantity to the  
3 Series Interest it sold in those pre-IPO  
4 shares also price and quantity." Do you  
5 see that?

6 A. Yes.

7 Q. So these are the spreadsheets  
8 that, part of the master spreadsheet that  
9 we talked about earlier, regarding  
10 Triller, for example, where you could  
11 show how much they purchased and how much  
12 was sold, correct?

13 A. Yes. It would be similar to  
14 Exhibit 4.

15 Q. Right. So it's referenced in  
16 22 but you chose not to include it in  
17 your declaration?

18 MR. GREENWOOD: Objection to  
19 form.

20 A. I didn't choose not to.

21 Q. Did you have any  
22 decisionmaking with respect to what went  
23 in and what went out of the declaration?

24 A. I provided my comments and  
25 edits, yes.

1 DOUGLAS J. SMITH

2 Q. Who did you provide them to?

3 A. Mr. Greenwood and Mr. Fortino.

4 Q. Do you know who drafted this?

5 A. I don't.

6 Q. Okay. Hold on. So let's look  
7 at paragraph 25.

8 With respect to the pre-IPO  
9 UiPath, between February 2nd, 2021 and  
10 March 8th, 2021 the SP Fund Manager sold  
11 more than 25.5 million in Series  
12 Interests in its pre-IPO shares; do you  
13 see that?

14 A. Yes.

15 Q. It says, "The SP Fund Manager,  
16 however, never paid for any UiPath  
17 pre-IPO shares at all. Ultimately, more  
18 than 17.5 million of these investments  
19 were moved over to Series Interests and  
20 other pre-IPO shares, and the SP Fund  
21 Manager refunded more than 8 million to  
22 investors who did not wish to do so." Do  
23 you see that?

24 A. Yes.

25 Q. Do you have any knowledge

1 DOUGLAS J. SMITH

2 whether StraightPath had arranged for the  
3 purchase of Ui shares?

4 MR. GREENWOOD: Objection to  
5 form.

6 A. I do recall seeing chats where  
7 they're engaging with a broker to  
8 purchase shares.

9 Q. So to confirm, you have seen  
10 what, text messages -- when you say  
11 chats, you mean text messages?

12 A. Yes, I think so.

13 Q. Okay. From reviewing that do  
14 you recall how things -- you know, how  
15 things proceeded with UiPath as far as --  
16 let me strike that.

17 Are you aware from reviewing  
18 those documents what led to UiPath  
19 ultimately not being purchased by  
20 StraightPath?

21 A. I don't know.

22 Q. Okay. So do you think you --  
23 did you take an effort to review all text  
24 messages related to UiPath?

25 A. I tried to, yes.

1 DOUGLAS J. SMITH

2 Q. Okay. So you're not aware  
3 whether a seller actually ended up  
4 preventing the purchase from going  
5 through?

6 A. I don't know.

7 MR. GREENWOOD: Objection to  
8 form.

9 A. I don't know. All I know is I  
10 didn't see funds being sent out of the  
11 bank account to purchase those shares.

12 Q. Okay. So all you know is that  
13 they had arranged to purchase UiPath  
14 shares?

15 MR. GREENWOOD: Objection to  
16 form.

17 A. Yes.

18 Q. I think we've got a sense of  
19 your answer here, but just to confirm,  
20 are you aware whether StraightPath is  
21 able, under its offering documents, to  
22 accept capital from investors before it  
23 closes on the purchase of pre-IPO stock?

24 MR. GREENWOOD: Objection to  
25 form.

1 DOUGLAS J. SMITH

2 A. I don't understand the  
3 question.

4 Q. Remind me, did you not review  
5 any of the offering documents, correct,  
6 for the purchases for the various  
7 offerings?

8 A. Yes.

9 Q. Yes, you did not review?

10 A. Correct, I did not.

11 Q. So are you aware that purchase  
12 documents, like -- are you aware of what  
13 a Private Placement Memorandum is?

14 A. Yes.

15 Q. Are you aware what an  
16 operating agreement is?

17 A. I believe so. I would have --  
18 it's been a long time since I looked at  
19 one in detail.

20 Q. Are you aware that these  
21 offering documents usually articulate,  
22 you know, the framework of what can  
23 happen in an offering?

24 MR. GREENWOOD: When you say  
25 "offering documents" are we talking

1 DOUGLAS J. SMITH

2 about --

3 MR. SHERMAN: Sorry.

4 Q. When I define "offering  
5 documents", I'll just, for the record,  
6 define them as Private Placement  
7 Memorandum, operating agreement for the  
8 funds and subscription agreement. That's  
9 how I'll define an operating agreement.

10 Have you ever reviewed a  
11 subscription agreement before for any  
12 private offering?

13 A. Yes.

14 Q. Okay. Have you ever reviewed  
15 an operating agreement for any private  
16 offering?

17 A. I have in the past when I  
18 worked for OC. I don't remember doing it  
19 in a long time.

20 Q. So do you understand from your  
21 prior review of these documents that the  
22 framework of what a manager can and can't  
23 do is generally outlined in the offering  
24 documents?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 A. Correct. Yes.

4 Q. Okay. So are you aware -- so I  
5 would say because you haven't reviewed  
6 the offering documents here, you have no  
7 knowledge of whether or not StraightPath  
8 could accept capital from investors  
9 before it closed on the purchase of  
10 pre-IPO stock, correct?

11 A. I don't know.

12 Q. So you say StraightPath raised  
13 more than 25.5 million in Series Interest  
14 in pre-IPO shares for UiPath, right?

15 A. Yes.

16 Q. And that more than 17.5  
17 million was moved to other Series  
18 Interests, right?

19 A. Yes.

20 Q. And that other IPO -- and more  
21 than 8 million was refunded, correct?

22 A. Correct.

23 Q. So all the UiPath money was  
24 accounted for, correct?

25 MR. GREENWOOD: Objection to



1 DOUGLAS J. SMITH

2 form.

3 Q. Let me rephrase. All the money  
4 that came in from investors, you know, as  
5 far as the 25.5 --when I say accounted  
6 for, you could trace where the money  
7 went?

8 A. For people that wanted -- for  
9 investors that wanted to purchase UiPath,  
10 I traced all incoming funds for that.  
11 And when StraightPath didn't send funds  
12 to third parties to purchase the shares,  
13 I then tracked if its investors wanted a  
14 refund because it wasn't getting UiPath  
15 shares or it wanted to place its  
16 investment in a different pre-IPO  
17 company.

18 Q. Are you aware of any  
19 complaints by investors related to  
20 UiPath?

21 A. I don't know.

22 Q. So I guess getting back to the  
23 point, you accounted for the 25.5 million  
24 coming in and where the 25.5 million went  
25 either as refunds or other investments,

1 DOUGLAS J. SMITH

2 correct?

3 MR. GREENWOOD: Objection to  
4 form.

5 A. Yes.

6 Q. Okay. You state that you  
7 calculated -- this is paragraph 23 of  
8 your document, you say that you  
9 calculated a collective shortfall in  
10 pre-IPO shares of nearly 14 million  
11 across seven pre-IPO companies. Do you  
12 see that?

13 A. Yes.

14 Q. Did you do an analysis  
15 comparing the percentage of total amount  
16 raised to the alleged shortfall?

17 A. No.

18 Q. Okay. But just to do the quick  
19 math, tell me if I'm wrong, you  
20 calculated the amount raised as to which  
21 you calculated roughly 411 million,  
22 right?

23 A. Yes.

24 Q. And the deficit you've  
25 calculated at this point is 14 -- roughly

1 DOUGLAS J. SMITH

2 14 million, right?

3 A. Yes.

4 Q. So would you agree, if you can  
5 do quick math, that's about 3.4%?

6 A. That sounds about right. I  
7 don't have a calculator.

8 Q. So let's look at Exhibits 3  
9 and 4. Exhibit 4 -- actually, let's turn  
10 to Exhibit 4. Let me know when you're  
11 ready.

12 A. Yes, I'm ready.

13 Q. So you include a spreadsheet,  
14 this spreadsheet that purports to show  
15 the shares purchased by StraightPath and  
16 the shares investors purchased or  
17 refunded, correct?

18 A. Yes.

19 Q. So we discussed a lot of this  
20 methodology earlier, but just to kind of  
21 close the loop, I just want to confirm  
22 you told me exactly how you got the  
23 numbers for these columns.

24 Do you know, can you tell me  
25 what the underlying -- is the underlying

1 DOUGLAS J. SMITH

2 documents again solely the bank records  
3 for the source of data?

4 A. Yes. So the dates, all inflows  
5 and outflows are based on, you know,  
6 money coming in, money coming out.

7 Q. Is there any other  
8 spreadsheets that you used to create this  
9 spreadsheet?

10 A. No, I don't believe so. Other  
11 than, you know, when someone -- as I said  
12 before, when someone is using their IPO  
13 proceeds to invest in another pre-IPO  
14 company.

15 Q. So -- okay. Go ahead. Sorry.  
16 Finish?

17 A. It's not reflected in the bank  
18 records, so that's where that information  
19 has to come from a different source.

20 Q. And what's that source?

21 A. It would be spreadsheets that  
22 were produced by StraightPath and  
23 paragraph 5.

24 Q. Okay. So let's kind of switch  
25 topics now.

1 DOUGLAS J. SMITH

2 So the concept -- and you've  
3 mentioned this word various times,  
4 "commingling". I just have a broader  
5 question, not about -- hold on. By the  
6 way, sidenote. For the record, we're  
7 trying to assess the document that your  
8 counsel sent over. So I may have to  
9 circle back on that Excel later in the  
10 testimony, but we'll keep going now to  
11 keep things moving.

12 So this is more of a broader  
13 question, setting aside, you know, kind  
14 of the concepts and how you look at  
15 things, you know, with respect to  
16 StraightPath.

17 So the concept of commingling,  
18 in and of itself, commingling means  
19 combining money from multiple sources,  
20 correct?

21 A. Yes.

22 Q. And so, in and of itself,  
23 commingling does not have a fraud  
24 component to it, right, just the concept  
25 of commingling? I'm not talking about

1 DOUGLAS J. SMITH

2 your views.

3 MR. GREENWOOD: I didn't hear  
4 the question there.

5 Q. So in and of itself, I said  
6 that commingling, basically combining  
7 money from multiple sources, does not  
8 have a fraud component, in and of itself.  
9 I'm not talking about his views of  
10 StraightPath.

11 A. Yeah. Absent from what I'm  
12 looking at, yes.

13 Q. Now, we talked about this  
14 previously, but I want to make sure that  
15 we can go through some items, even though  
16 you didn't review any of the offering  
17 materials for StraightPath.

18 You had testified about the  
19 fact that the one item of we'll call them  
20 fees or other types of dollars  
21 StraightPath could earn were under the  
22 term markup, as you put in your  
23 spreadsheet, correct?

24 A. Yes.

25 Q. Okay. So are you aware whether

1 DOUGLAS J. SMITH

2 or not StraightPath disclosed to  
3 investors that it would be marking up  
4 stock or may mark up stock?

5 A. I don't know.

6 Q. Are you aware whether or not  
7 StraightPath informed investors that they  
8 could charge an expense fee?

9 MR. GREENWOOD: Objection to  
10 form on this line of questioning,  
11 just on the foundation issue but I  
12 don't want to interrupt it.

13 MR. SHERMAN: I mean, look, at  
14 the end of the day, you know, in  
15 reviewing everything he chose not  
16 to review the offering documents.  
17 So I'm trying to understand if he  
18 otherwise knew about key  
19 information like the fees that they  
20 disclosed.

21 MR. GREENWOOD: He can answer  
22 the question.

23 Q. I'm asking -- I mean,  
24 generally speaking, were you aware  
25 whether or not the manager could charge

1 DOUGLAS J. SMITH

2 each member a fee equal to 1% of the  
3 member's capital contribution defined as  
4 an expense fee?

5 A. I don't know.

6 Q. Are you aware, generally, of  
7 kind of the concept -- have you ever  
8 heard the concept 2 and 20?

9 A. Yes.

10 Q. What's your understanding of 2  
11 and 20?

12 A. The 2% is when you take out  
13 the percentage of what you're managing  
14 for investors and the 20% is what you are  
15 gaining or losing when you take money  
16 from investors' gain or loss.

17 Q. Do you know what a carried  
18 interest is?

19 A. Generally, yes.

20 Q. What's your understanding?

21 A. I mean, it can mean multiple  
22 things. So, you know, I'd have to look at  
23 the definition.

24 Q. So sitting here today, you  
25 don't have a definition of, even if



1 DOUGLAS J. SMITH

2 there's multiple definitions, you can't  
3 provide me any definition of what a  
4 carried interest is?

5 A. No. I'm sorry.

6 Q. Okay. So just to back up. You  
7 went out and audited for OC 50 different  
8 funds and you're telling me right now you  
9 can't define what carried interest is?

10 MR. GREENWOOD: Objection to  
11 form.

12 A. Not that I can recall. I  
13 worked for OC so long ago and I worked on  
14 multiple different cases now that aren't  
15 in hedge funds or private equity fund's  
16 territory, so it's been a while. I would  
17 have to refresh my memory and look  
18 through and see those definitions in this  
19 business.

20 Q. Well, let's just understand.

21 Do you understand whether or  
22 not StraightPath disclosed that it could  
23 take a carried interest in connection  
24 with its offerings?

25 A. I don't know.

1 DOUGLAS J. SMITH

2 Q. Don't you think that would be  
3 important if you're assessing and  
4 analyzing information, including the fees  
5 that StraightPath may earn?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. Right. So I only looked at the  
9 bank account analysis. If I did a whole  
10 analysis on the brokerage records I would  
11 go down that road of figuring that out. I  
12 just didn't have enough time to do it on  
13 my own.

14 Q. Okay. And ultimately -- but  
15 understanding what fees StraightPath did  
16 earn could be important to understand  
17 what assets are StraightPath's sitting in  
18 the bank accounts, correct?

19 A. In the bank accounts there's  
20 only \$2 million left, less than \$2  
21 million.

22 Q. I'm not talking today. I'm  
23 saying, generally speaking, you looked at  
24 bank accounts since 2017, that's the core  
25 of what you looked at?

1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. And so I'm asking, wouldn't it  
4 be important to understand in your  
5 analysis, looking at bank records, how  
6 much those of those dollars were  
7 StraightPath's carried interest?

8 MR. GREENWOOD: Objection to  
9 form.

10 A. Yes. And as I said before  
11 multiple times, I can easily determine  
12 this from the money that's coming in from  
13 the brokerage accounts, subtracting the  
14 money that's sent out for investor  
15 distributions, and also investors that  
16 chose to move their IPO profits in  
17 another pre-IPO company. So we can do  
18 this from the bank records' perspective.  
19 It's not something that I cannot do.

20 Q. But you didn't do it?

21 A. I did do -- I mean, I know --  
22 I know this. This is why I'm telling you  
23 this, it's just not in my declaration.

24 Q. So you -- you are saying that  
25 you calculated the carried interest owed

1 DOUGLAS J. SMITH  
2 across the entire time period to  
3 StraightPath --

4 A. No.

5 MR. GREENWOOD: Let him finish  
6 the question. Let me object to  
7 form. You can answer.

8 Q. I'm just trying to understand  
9 what you are saying you calculated?

10 A. Right. I'm calculating all  
11 inflows and outflows of money in the bank  
12 accounts. The inflows that could pertain  
13 to carried interest are coming from  
14 brokerage accounts. I know that figure.  
15 And then to subtract what is remaining  
16 for carried interest, you have to  
17 subtract the investor distributions, and  
18 then the amounts that investors want to  
19 use their IPO profits to invest in  
20 another pre-IPO company.

21 Q. You just testified -- sorry,  
22 Mr. Smith. You just testified that you  
23 don't even know the definition of carried  
24 interest and never looked at the PPM to  
25 understand what carried interest

1 DOUGLAS J. SMITH

2 StraightPath was entitled to. But we're  
3 here to believe that somehow you could  
4 have still calculated carried interest,  
5 even though you can't define it?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. So I said, generally I  
9 understand the concept. I did not do the  
10 analysis of carried interest across the  
11 board. But when it comes to the bank  
12 accounts, I can arrive at a figure where  
13 it could be carried interest.

14 Q. But you have no idea because  
15 you can't even define the term?

16 A. I know the amounts that  
17 represent what you're talking about and I  
18 can do that.

19 Q. Okay. Now, on the 2 and 20, we  
20 talked about the 2, that's the concept of  
21 typically that's 2% yearly management fee  
22 based on assets under management that a  
23 fund can charge, correct?

24 A. Correct.

25 Q. Are you aware whether or not

1 DOUGLAS J. SMITH

2 StraightPath could charge the 2%  
3 management fee?

4 A. I don't know.

5 Q. Okay. Are you aware whether  
6 they did charge a 2% management fee?

7 A. I don't know.

8 Q. So let me just double check  
9 here because you told me kind of at  
10 length about how much stuff you looked  
11 at, and on paragraph 5 you say that you  
12 looked at welcome letters, correct?

13 A. Yes.

14 Q. So just to double check here,  
15 are you aware whether or not these  
16 welcome letters reference that there was  
17 no management fee charged?

18 A. There were a separate fee at  
19 the bottom of welcome letters and it  
20 would have said a percentage in the  
21 amount of fees and in the vast majority  
22 of the welcome letters there was zero  
23 across the board for fees.

24 Q. So then for the documents you  
25 read, and you actually do know they

1 DOUGLAS J. SMITH

2 didn't charge a management fee of 2%,  
3 right?

4 A. I'm saying I don't know  
5 because I would look to the general  
6 ledgers for this information, the profit  
7 and loss, the balance sheet, it's not in  
8 there. So StraightPath is not  
9 categorizing how it collects its fees and  
10 what its for. So I'm looking at all  
11 inflows and outflows and doing the math  
12 to come up with a markup figure.

13 Q. So also separate and apart  
14 from this, are you aware whether or not  
15 StraightPath, the manager, StraightPath  
16 Venture Partner could charge a due  
17 diligence fee?

18 A. I don't know.

19 Q. Do you know -- so you have no  
20 idea if they could or if they did or  
21 didn't charge a diligence fee?

22 A. I don't know.

23 MR. GREENWOOD: Objection to  
24 form.

25 Q. Do you know whether or not

1 DOUGLAS J. SMITH

2 they could charge or -- do you know  
3 whether or not they disclosed that they  
4 could charge a marketing agent or  
5 placement fee?

6 A. I don't know.

7 Q. So you have no idea if they  
8 paid placement agents?

9 MR. GREENWOOD: Objection to  
10 form.

11 A. What is -- I don't understand  
12 the question.

13 Q. Let me just ask, just to be  
14 clear. You don't know the definition --  
15 you don't have a definition of placement  
16 agent?

17 MR. GREENWOOD: Objection to  
18 form.

19 Q. Let me ask, do you understand  
20 the term placement agent?

21 A. You'd have to explain it more  
22 to me.

23 Q. Do you understand the term  
24 marketing agent?

25 A. No.



1 DOUGLAS J. SMITH

2 Q. Do you know whether or not  
3 they could charge, a manager could charge  
4 and disclose that they could charge a  
5 performance bonus fee?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. I don't know.

9 MR. SHERMAN: There is no  
10 foundation. I'm asking whether he  
11 understands.

12 MR. GREENWOOD: You're -- the  
13 questions are compound. You're  
14 asking at least two questions at a  
15 time.

16 MR. SHERMAN: I'm asking  
17 whether or not he knows whether  
18 they could charge a performance  
19 fee.

20 MR. GREENWOOD: That's fine.

21 A. I don't know.

22 Q. Sorry. Separate question.

23 Do you know whether or not  
24 they disclosed to investors that they  
25 could charge a performance fee?

1 DOUGLAS J. SMITH

2 A. I don't know.

3 Q. Do you know what a waterfall  
4 is?

5 A. It's been a while. I used to  
6 know what that term meant. I don't  
7 anymore.

8 Q. Okay. So in understanding how  
9 money -- how investor dollars get  
10 distributed, do you think it's important  
11 to know how StraightPath or any fund  
12 looks at, you know, distributions -- let  
13 me strike that.

14 In doing your analysis,  
15 regarding, in dollars to investors or  
16 otherwise, do you believe it's important  
17 to understand the calculation that goes  
18 into distributions?

19 A. For investor distributions,  
20 yes.

21 Q. Okay. So what was the  
22 calculation regarding distributions for  
23 StraightPath?

24 A. I don't know. I didn't do that  
25 analysis. All I did was categorize

1 DOUGLAS J. SMITH  
2 whether it happened in the bank accounts,  
3 the money moving from brokerage accounts  
4 to bank account for distributions.

5 MR. GREENWOOD: Scott,  
6 whenever is a good time, we've been  
7 going a little over an hour.

8 MR. SHERMAN: That's fine. We  
9 can take a break.

10 VIDEOGRAPHER: Stand by. Going  
11 off the record 3:20 p.m. This is  
12 the end of Media Unit 3.

13 (Recess is taken.)

14 VIDEOGRAPHER: We're back on  
15 the record 3:31 p.m. This is the  
16 beginning of Media Unit 4. You may  
17 proceed.

18 Q. Mr. Smith, Scott Sherman  
19 again. You recognize you're still under  
20 oath, correct?

21 A. Yes.

22 Q. So jut to close the loop on  
23 the carried interest question, did you  
24 ever calculate back in carried interest  
25 earned by StraightPath at any point?

1 DOUGLAS J. SMITH

2 A. No.

3 Q. Just touching base on this 17  
4 million, we did get a spreadsheet, and I  
5 was just wanted to ask a couple of  
6 questions more high level.

7 The 17 million spreadsheet,  
8 the one that -- with all this data, this  
9 is referencing \$17 million that came in  
10 from investors; is that what you are  
11 saying that is?

12 A. Yes.

13 Q. What else is this showing,  
14 besides that?

15 MR. GREENWOOD: When you say  
16 "what's this" --

17 MR. SHERMAN: Well, I'm just  
18 asking -- we can introduce it.  
19 Josh, you want to just label it or  
20 is there a way to label that one  
21 real quick?

22 MR. GREENWOOD: Can I ask him  
23 to open it on his computer so he  
24 looks at it?

25 MR. SHERMAN: Yeah. We're

1 DOUGLAS J. SMITH

2 going to label it and it's going to  
3 be put in the database.

4 MR. GREENWOOD: That's good  
5 too.

6 MR. SHERMAN: You have it too,  
7 however you want to open it.

8 MR. GREENWOOD: I know but  
9 typically we don't want him to open  
10 documents that he's not being asked  
11 to look at.

12 MR. SHERMAN: Sure. Josh, let  
13 me know when it's uploaded so we  
14 have it for the record too.

15 (Defendants' Exhibit 6, Excel  
16 spreadsheet re: Amounts raised and  
17 refunded, was received and marked  
18 on this date for identification.)

19 MR. LEWIN: I've introduced  
20 it. It would be Defendants' 6.  
21 Because it's an Excel it says it  
22 can't put the stamp on the  
23 document, so I'm not sure what it's  
24 going to show like but this is  
25 going to be Defendants' 6.

1 DOUGLAS J. SMITH

2 Q. Okay. So pulling this up, walk  
3 me through so I understand, in looking at  
4 this what -- why did you create this  
5 separate spreadsheet?

6 A. Because I was asked to --

7 Q. I'm sorry. If it's a  
8 privileged part -- let me ask you a  
9 different question.

10 What was the -- what was the  
11 purpose of this spreadsheet? Like, what  
12 was it designed to show?

13 A. Right. So inventory count, all  
14 money coming in from investors or being  
15 refunded to investors. I don't know which  
16 pre-IPO companies they're purchasing, how  
17 many shares, what price.

18 Q. Is that because -- where would  
19 you -- where would you normally look for  
20 that information?

21 A. So it would be the information  
22 that I have in paragraph 5 and nothing  
23 came up.

24 Q. So you mean, like, if there  
25 was a welcome letter?

1 DOUGLAS J. SMITH

2 A. Correct.

3 Q. What about Quickbooks?

4 A. Same thing.

5 Q. So for the record, we've  
6 produced the reconciled updated  
7 Quickbooks subject to accountant review  
8 today that was just completed. So you  
9 could look at that potentially to help  
10 with this, correct?

11 A. Correct.

12 Q. I see on the right side it has  
13 last name or entity?

14 A. Yes.

15 Q. Now, when you did your  
16 original -- this spreadsheet here where,  
17 that are in your declaration, none of the  
18 spreadsheets for where the money came in  
19 from investors has investor names. You do  
20 understand that, right?

21 A. Yes.

22 Q. But when you did the  
23 spreadsheet like originally or the  
24 information where it came from, it did  
25 have investor names, right?

1 DOUGLAS J. SMITH

2 MR. GREENWOOD: Objection to  
3 form.

4 A. I have these names in my work  
5 product, yes.

6 Q. So you could reproduce the  
7 exhibits that show, like, Exhibit I think  
8 it's 2, you could reproduce that with  
9 investor names connected to each row,  
10 right?

11 A. Correct.

12 Q. Just to go back to your  
13 declaration, paragraph 30, it says "Based  
14 on my review of the documents neither SP  
15 Fund Manager nor Castillero, Martinsen or  
16 Lanaia kept records of the fees that  
17 either the SP Fund Manager or the SP Fund  
18 purported to accrue, collect or pay out."  
19 Do you see that?

20 Now, how do you define, just  
21 so I understand since you -- let me ask  
22 you, did you write this sentence?

23 A. No.

24 Q. Just to confirm because we've  
25 gone through every paragraph, is there



1 DOUGLAS J. SMITH

2 any sentence you did write in here that  
3 you -- I mean, you can look through it  
4 for a minute, I'm trying to understand,  
5 outside of edits or some modifications,  
6 did you draft any of this?

7 A. No.

8 Q. So on this paragraph you used  
9 -- well, somebody else who wrote this  
10 used the word "fees", but you had  
11 attested to it as being based on your  
12 personal knowledge. You understand that,  
13 right?

14 A. Yes.

15 Q. So when you read this, since  
16 it's your declaration, what is it  
17 referring to in your mind when you use  
18 the word "fees"? What are the fees?

19 A. Some of the fees that you were  
20 talking about earlier that I don't know  
21 if they took out those specific fees.

22 Q. When you say the fees I was  
23 talking about, just so I understand --  
24 you testified earlier you have never read  
25 the offering documents and had no

1 DOUGLAS J. SMITH

2 knowledge about any of the fees I was  
3 discussing, correct?

4 A. I mean, we had talked about  
5 the welcome letters and how there are  
6 fees at the bottom and it says zero  
7 percent, you know, zero amounts for some  
8 of those. So I mean, that's the only fees  
9 that I remember seeing.

10 Q. Okay. So I just need to  
11 understand, getting back to -- I know  
12 memory is a challenge for you today, but  
13 let's talk about last Wednesday when you  
14 signed this.

15 Do you remember, as best you  
16 can, when you saw the word "fees", what  
17 specific fees you thought this was  
18 referring to?

19 A. So I don't have a specific  
20 fees in my mind. It was just was not  
21 accounted for in the Quickbooks as  
22 anything.

23 Q. So you are saying simply  
24 because there is not a separate line item  
25 that uses the word "fees", your view is

1 DOUGLAS J. SMITH

2 that it's not accounted for?

3 A. Yes.

4 MR. GREENWOOD: Objection to  
5 form.

6 A. Yes. And there is no P&L  
7 records or anything, so there is no --  
8 there is no categorization from  
9 StraightPath records that talk about the  
10 fees.

11 Q. And you understand, as  
12 discussed earlier that, StraightPath has  
13 been in the process of reconciling its  
14 Quickbooks, correct?

15 MR. GREENWOOD: Objection to  
16 form.

17 A. I don't know.

18 Q. You have no knowledge. Okay.  
19 And are you aware that StraightPath just,  
20 subject to accountant review, has  
21 completed reconciliation of its  
22 Quickbooks and produced P&L and balance  
23 sheet, trial balance as of current?

24 MR. GREENWOOD: Objection to  
25 form.

1 DOUGLAS J. SMITH

2 A. I don't know.

3 Q. That information would be  
4 helpful, as you said, to review for fees  
5 and the rest, correct?

6 A. It may be.

7 Q. But you just told me that I  
8 need a balance sheet, I need a P&L,  
9 right?

10 A. For multiple different data  
11 points. But what I calculated in the bank  
12 records is that the markup still exists  
13 regardless of what fees will be in the  
14 general ledger. So my works will stand  
15 irregardless of whatever other document  
16 is there, because they're sending funds  
17 out to third parties for shares at a  
18 price and then they're selling to  
19 investors at a higher price. I've  
20 calculated that differential. So I have  
21 accounted for all inflows and outflows  
22 out of the bank account.

23 Q. But what you haven't accounted  
24 for is understanding of how much money  
25 came in and what stock is there, how much

1 DOUGLAS J. SMITH

2 of that is earned -- is fees that  
3 StraightPath may be entitled to under its  
4 PPM, correct?

5 MR. GREENWOOD: Objection to  
6 form.

7 A. So as I said multiple times  
8 before, we can easily calculate this from  
9 money that's coming in from brokerage  
10 accounts and subtracting that against  
11 investor distributions, as well as  
12 pre-IPO or IPO companies that have  
13 profited and they're moving into another  
14 IPO company, and that amount is far less  
15 than the markup.

16 Q. You said that amount is far  
17 less than the markup. I don't understand  
18 what you are saying.

19 A. So the total amount of markup  
20 is over \$100 million.

21 Q. Okay. And the total amount of  
22 assets is 200 million, over 200 million,  
23 from what you said?

24 A. That's how much money they  
25 sent out to third parties to acquire

1 DOUGLAS J. SMITH

2 shares at that price when they sent out  
3 the funds.

4 Q. And you've also articulated  
5 that the total amount raised was over 400  
6 million, correct?

7 A. Yes.

8 Q. So getting back to very simply  
9 the point I was trying to make is, you  
10 reference the concept of there is no  
11 record of fees, but at the end of the  
12 day, very simply the point, yes or no,  
13 you do not know all the fees that  
14 StraightPath disclosed it could charge to  
15 its investors?

16 A. Correct.

17 Q. Okay. Paragraph 31 you state  
18 that the general ledger describes  
19 transfers from the manager and the funds  
20 as transfers, without identifying these  
21 transfers as accrued fees or other  
22 compensation.

23 You would agree that just  
24 because a general ledger entry does not  
25 describe the type of transfer doesn't

1 DOUGLAS J. SMITH

2 make the transfer improper, right?

3 A. That could be true, yes.

4 Q. That transfer could be for  
5 accrued fees or carried interest, for  
6 example?

7 A. It could be.

8 Q. Okay. You never did an  
9 analysis whether the manager, when it  
10 earned fees from markups or back-end  
11 carried interest, transferred money into  
12 the manager's bank accounts, correct?

13 MR. GREENWOOD: Objection to  
14 form.

15 A. I don't understand the  
16 question.

17 Q. Okay. So money went into the  
18 manager's bank account, correct, at  
19 times?

20 A. Yes.

21 Q. And my question is; you never  
22 did an analysis to determine whether that  
23 money was earned fee -- was for fees or  
24 markups or back-end, correct?

25 A. I did for markups, yes. And

1 DOUGLAS J. SMITH

2 for anything else we can easily calculate  
3 that, yes.

4 Q. But you didn't calculate it?

5 A. I didn't -- I don't have it in  
6 my declaration. I did calculate it.

7 Q. So you calculated other fees  
8 earned by StraightPath other than  
9 markups?

10 MR. GREENWOOD: Objection to  
11 form.

12 A. No, that is not what I said.

13 Q. What did you say?

14 MR. GREENWOOD: Hold on.  
15 Objection to form.

16 MR. SHERMAN: I'm asking what  
17 he just said. He said I didn't say  
18 that, so I'm asking him what he  
19 said. I don't know what that  
20 objection is about. I'm asking what  
21 his testimony was because I don't  
22 understand what he is saying.

23 A. As I said before, I haven't  
24 calculated any kind of carried interest,  
25 any other fees that are coming from the



1 DOUGLAS J. SMITH

2 brokerage accounts and then going to make  
3 investor distributions or to roll it into  
4 other pre-IPO companies but I have those  
5 figures.

6 Q. So you don't know whether  
7 money in a fund bank account was ever  
8 money that was accrued fees earned by the  
9 manager, right?

10 A. I don't know.

11 Q. So now, you stated that  
12 StraightPath moved money across funds to  
13 purchase pre-IPO shares, correct?

14 A. Yes.

15 Q. Okay. So now, we just talked  
16 about fees that you didn't account for  
17 outside of markups. Let me rephrase.

18 You just talked about the  
19 analysis you did was markups, but we're  
20 just talking about at times you will see  
21 from the bank accounts, dollars in a  
22 particular fund bank account, right?  
23 You'll see them in the bank statements,  
24 correct?

25 A. I don't understand the

1 DOUGLAS J. SMITH

2 question.

3 Q. Okay. When you were looking at  
4 bank statements throughout the time  
5 period, we're talking about from 2017  
6 onwards, there were dollars, monies,  
7 sitting in the fund bank accounts,  
8 correct?

9 A. Yes.

10 Q. Okay. And you saw money moving  
11 at times between one fund and another,  
12 correct?

13 A. Yes.

14 Q. Sorry. Someone else is trying  
15 to start a Teams call. I lost my train of  
16 thought. I apologize.

17 So with those dollars it's  
18 possible that StraightPath had accrued  
19 fees in the fund bank account that it  
20 earned but simply never moved them -- let  
21 me say it differently.

22 They accrued fees in the fund  
23 bank account and used those fees that  
24 they had earned to pay for new pre-IPO  
25 shares; is that a possibility?

1 DOUGLAS J. SMITH

2 A. I don't know.

3 Q. Right. Because you didn't  
4 analyze the fees that they earned, other  
5 than markups?

6 A. Correct.

7 Q. So it's possible that money  
8 transferred -- transferring from one fund  
9 to another was accrued fees that was  
10 StraightPath's money that it used to buy  
11 new stock, correct?

12 A. I don't know.

13 Q. Now, I want to walk you  
14 through the sale of a stock and then ask  
15 questions.

16 So you agree with me that  
17 StraightPath went out and bought millions  
18 of dollars of private company stock,  
19 right?

20 A. I see funds moving to third  
21 parties to purchase shares. Whether they  
22 exist, I don't know. I haven't tracked  
23 the custody of those shares.

24 Q. Okay. So you're saying that  
25 from your analysis you didn't -- you

1 DOUGLAS J. SMITH

2 don't have an analysis to confirm if  
3 StraightPath bought one stock from its  
4 own money?

5 MR. GREENWOOD: Objection to  
6 form.

7 A. So, as I said, when funds are  
8 going out from bank accounts to a third  
9 party I know the amount of shares that  
10 they purchased and the price and the fees  
11 associated with that transaction. That's  
12 what I looked at.

13 Q. Let's make this easier. Let's  
14 assume that StraightPath went out and  
15 bought stock that it inventoried of its  
16 own money, okay?

17 An investor that wants an  
18 interest in the stock could then go to  
19 StraightPath and invest in the fund,  
20 correct?

21 A. Okay.

22 Q. Do you understand my  
23 hypothetical so far?

24 A. Not really.

25 Q. Let's back up. If an investor

1 DOUGLAS J. SMITH

2 wants to invest in a fund that connects  
3 to pre-IPO shares, they would have to put  
4 money in, correct?

5 A. They would send funds, yes,  
6 into purchase shares.

7 Q. Okay. So once that money is in  
8 there the idea is -- in the fund, the  
9 idea is that that money is going to be  
10 used to buy the stock, correct?

11 A. That's not my understanding of  
12 what happened in the welcome letters.

13 Q. Okay. So I'm not -- I'm just  
14 talking generally speaking, that if an  
15 investor wants to put money in, their  
16 money is going to be used in exchange for  
17 interest that tie to stock, correct?

18 MR. GREENWOOD: Objection to  
19 form.

20 A. That's not how I understand  
21 how it worked. StraightPath --

22 Q. How do you understand it?

23 A. StraightPath told investors in  
24 the welcome letters that they already  
25 owned the shares, and as I testified

1 DOUGLAS J. SMITH

2 earlier, there were deficits across all  
3 of them in the beginning.

4 Q. Well -- sorry. Go ahead,  
5 finish.

6 A. That's it.

7 Q. So you keep talking about  
8 deficits. The only deficits I've seen  
9 that you've identified are seven stocks  
10 -- seven companies, correct?

11 A. As of today.

12 Q. Right. And so if you saw a  
13 deficit I guess earlier on and that  
14 deficit was taken care of, because as of  
15 today that deficit doesn't exist for the  
16 other stocks, correct?

17 A. In my mind there should never  
18 be a deficit.

19 Q. I'm not asking that question.  
20 I'm not asking you to advocate for the  
21 SEC's position here. I'm asking you a  
22 simple question. I'm asking you --

23 MR. GREENWOOD: Let's focus on  
24 the question and try to answer the  
25 question.

1 DOUGLAS J. SMITH

2 Q. With the SEC -- with the --  
3 you've noted at various times there were  
4 deficits, but sitting here -- of various  
5 stocks other than seven, but sitting here  
6 today you have noticed and notified the  
7 court that you see seven stocks with  
8 deficits, correct?

9 A. Yes.

10 Q. Okay. And so, therefore, for  
11 any other ones you saw over time if there  
12 was a deficit, as you say, then clearly  
13 that was made up so that there was no  
14 more deficit, correct?

15 A. I don't know if it was made up  
16 or not.

17 Q. How could it otherwise be if  
18 there is no deficit today?

19 A. I don't know what to tell you.  
20 I mean, when you -- when you sell someone  
21 a higher price, and you haven't even  
22 purchased the shares at the lower price,  
23 you know, it just defies logic to me to  
24 engage in this, like, hypothetical -- the  
25 shares don't exist.

1 DOUGLAS J. SMITH

2 So yes, at the end of the day,  
3 these are the deficits but just because  
4 they're less than other shares now --

5 Q. Here is the problem. You keep  
6 talking about -- I want to make sure I  
7 understand. You keep discussing this  
8 concept of some overall deficit.

9 We're talking about, as I  
10 understand it, a total of 14 million,  
11 3.4% deficit over 400 million raised,  
12 correct?

13 A. Yes.

14 Q. Okay. So there's not deficits  
15 on every stock, there's deficits that you  
16 show in seven stocks, correct, sir?

17 A. As of today, yes.

18 Q. As of today. But we're here  
19 today, this is why the SEC has sued,  
20 because of 14 million and the other  
21 allegations, correct?

22 A. Yes.

23 Q. So what I'm trying to say and  
24 understand is when you're looking at the  
25 stock, from looking at everything



1 DOUGLAS J. SMITH

2 StraightPath, clearly had an extensive  
3 amount of stock that it sold to investors  
4 that it had. There was not a deficit for  
5 every stock that it sold. That is a false  
6 statement, isn't it true, sir?

7 MR. GREENWOOD: Objection to  
8 form.

9 A. No. No. Because when they're  
10 selling shares to investors you had  
11 deficits that existed at that time that  
12 were cured later on.

13 Q. You've seen deficits in every  
14 stock -- for example, Triller, at any one  
15 point in time had a deficit?

16 A. Yes. All of them had deficits  
17 at one point in time.

18 Q. So I don't understand. So if  
19 ultimately what you are saying is that  
20 there is some deficit, I just want to  
21 understand, you are saying at no point in  
22 time StraightPath ever had a stock in  
23 inventory through a contract with a third  
24 party that it was selling to investors,  
25 it never once had stock in inventory, is

1 DOUGLAS J. SMITH

2 that what you are testifying to?

3 MR. GREENWOOD: Objection to  
4 form.

5 A. No, it changed every day. You  
6 have to look at the inventory of every  
7 single pre-IPO company throughout time  
8 and we're really talking about snapshots  
9 in time.

10 Q. I'm asking a simple question.  
11 From what you just said, you will admit  
12 that there was times, I'd say substantial  
13 time, but very minor when there is  
14 actually deficits, but there was clearly  
15 times when StraightPath had plenty of  
16 stock to sell to its investors; is that  
17 true?

18 MR. GREENWOOD: Objection to  
19 form.

20 A. I don't know.

21 Q. You don't know if StraightPath  
22 -- I'm just trying to ask a simple  
23 question.

24 You said that StraightPath had  
25 stock to sell to its investors, it wasn't

1 DOUGLAS J. SMITH

2 always in a deficit, correct?

3 A. Yes.

4 Q. So getting back to my -- which  
5 really isn't a hypothetical, you've  
6 confirmed now that StraightPath had stock  
7 that it would go out and sell to  
8 investors, correct?

9 A. They've already been sold to  
10 investors as of today, so --

11 Q. I'm not talking about today.  
12 I'm talking about a prior point in time.

13 StraightPath had stock that it  
14 sold to investors -- sold through  
15 investments in funds, correct?

16 A. Yes.

17 Q. Okay. And in exchange for  
18 StraightPath selling the stock so that  
19 investors would have their beneficial  
20 interest, investors pay money, correct?

21 A. Yes.

22 Q. Okay. So then, therefore, in  
23 that situation that money is now  
24 StraightPath's because it has been -- it  
25 has sold stock, it gets the money, the

1 DOUGLAS J. SMITH

2 stock goes to the funds for the  
3 investors, correct?

4 MR. GREENWOOD: Objection to  
5 form.

6 A. So the money is the markup  
7 differences.

8 Q. No. No. No. No. The money is  
9 not the markup differences. If I sell a  
10 stock to an investor for \$100 through a  
11 fund and the investor gives me \$100, the  
12 \$100 is mine because now they have the  
13 interest in the stock. It has nothing to  
14 do with the markup.

15 MR. GREENWOOD: Objection to  
16 form. Scott, you just want to argue  
17 with the witness?

18 MR. SHERMAN: No. I'm asking  
19 him --

20 MR. GREENWOOD: Ask him a  
21 question.

22 MR. SHERMAN: I'm asking him.

23 Q. I'll say it again so it's very  
24 clear as a question.

25 StraightPath sells a stock for

1 DOUGLAS J. SMITH

2 \$100 in the funds, the investor gives the  
3 \$100, the \$100 is now StraightPath's, the  
4 investor has an interest in the fund  
5 equivalent to the \$100 in stock, correct?

6 A. Yes.

7 Q. Okay. So, therefore, there is  
8 nothing improper if StraightPath uses  
9 that \$100 to buy other stock, correct?

10 MR. GREENWOOD: Objection to  
11 form.

12 A. I don't know.

13 Q. You don't know if StraightPath  
14 should have the right to use its money  
15 when it sold stock?

16 MR. GREENWOOD: Objection to  
17 form.

18 A. I don't know.

19 Q. How do you not know? What is  
20 confusing you on that question?

21 MR. GREENWOOD: Objection to  
22 form.

23 A. I don't understand.

24 Q. You don't understand. Okay.  
25 So if StraightPath sells stock

1 DOUGLAS J. SMITH

2 through a fund for \$100, and we've  
3 already talked about that the investor  
4 gave StraightPath that \$100, we already  
5 agreed that StraightPath -- that \$100 is  
6 StraightPath's, correct?

7 MR. GREENWOOD: Objection to  
8 form.

9 A. I don't know.

10 Q. You don't know whose money the  
11 \$100 is?

12 A. So I mean --

13 MR. GREENWOOD: Objection to  
14 form.

15 A. -- I don't -- I don't  
16 understand the question. I'm so off in  
17 terms of where we're going and I'm just  
18 totally confused.

19 Q. Okay. I'm trying to understand  
20 whether or not you ever accounted for the  
21 fact that StraightPath sold stock it had  
22 in inventory and then used that stock  
23 cash, the cash it got to buy other -- buy  
24 other stock, whether you analyzed that?

25 A. Right. And as I've said

1 DOUGLAS J. SMITH

2 multiple times, I can account for all  
3 inflows and outflows of funds.

4 I guess you're trying to  
5 categorize it in a way that I didn't and  
6 I just don't understand. I don't  
7 understand --

8 Q. You've testified about this  
9 concept of -- go ahead.

10 A. -- it's not how I did my  
11 analysis, and it doesn't -- all inflows  
12 and outflows are categorized in a certain  
13 way and the vast majority of what was  
14 taken out at the end of the day, what was  
15 paid to the StraightPath's employees and  
16 finders results from those markups. You  
17 know, the inflows and outflows, the  
18 dollars coming in and out is what it is.

19 Q. Okay. You have a declaration  
20 here where you have taken pains to argue  
21 and you've even testified that this  
22 commingling was bad, in your mind, and  
23 establishes fraud in your mind? Is that  
24 what I understand from your testimony?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 Q. You have testified that the  
4 commingling of StraightPath, you know,  
5 was some -- at least as I understand it,  
6 you testified and you put in your  
7 declaration all sorts of concerning  
8 statements and allegations that go into  
9 this SEC Complaint related to  
10 commingling, correct?

11 MR. GREENWOOD: Objection to  
12 form.

13 A. Yes.

14 Q. Okay. You have a concern about  
15 the commingling here, correct?

16 A. Yes.

17 Q. Okay. And what I'm saying is,  
18 when StraightPath -- if StraightPath, in  
19 analyzing the dollars for example, in  
20 fund bank accounts, some of those dollars  
21 could be dollars that StraightPath got  
22 for selling stock that it had in  
23 inventory, correct?

24 A. So, again --

25 Q. Yes or no?



1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. Okay. And so when we talk  
4 about -- and there very well could be  
5 times, it's possible, that when  
6 StraightPath earned, as I said earlier,  
7 that \$100 it simply left it in the fund  
8 bank account, correct? That's possible?

9 A. Yes.

10 Q. Okay. And it's possible that  
11 StraightPath then used its \$100 to buy  
12 other stock, correct?

13 A. Yes.

14 Q. And it's possible at times  
15 that that \$100 was moved from one fund to  
16 another fund to buy stock, correct?

17 A. Yes.

18 Q. But it's still StraightPath's  
19 \$100, right?

20 A. I guess. I don't know.

21 Q. Okay. Let me just move to  
22 paragraph 39 of your declaration. Let me  
23 know when you're ready.

24 A. I'm ready.

25 Q. You stated that the 48 million

1 DOUGLAS J. SMITH

2 was paid to unregistered sales agents in  
3 more than 5.6 million in Commission  
4 payments, correct?

5 A. Yes.

6 Q. So let me ask you this, you  
7 didn't write this, correct?

8 A. Correct.

9 Q. So did -- what analysis did  
10 you do to confirm that all the 48 million  
11 that you say here went to agents that  
12 were unregistered?

13 A. Yeah. So on the outflows from  
14 bank statements going to these  
15 individuals' bank accounts and making the  
16 determination if they were registered or  
17 not from looking at FINRA database.

18 Q. So you looked at each person  
19 that got a dollar and determined whether  
20 or not, from this 48 million, whether or  
21 not they were registered or not?

22 A. Yes.

23 Q. Then let me ask, on this --  
24 just looking at this, there is no backup,  
25 so I'm just looking. Where did you do

1 DOUGLAS J. SMITH

2 this analysis?

3 A. So it would be in my master  
4 spreadsheet, in looking at the bank  
5 analysis and categorizing each row  
6 accordingly.

7 Q. Is that another spreadsheet or  
8 part of -- sorry.

9 Is that another section of  
10 your master that you could print out or  
11 send in a smaller form that goes through  
12 all the numbers?

13 A. In the same spreadsheet that  
14 we were talking about earlier, yes.

15 Q. But you could, like, take that  
16 information and create -- like, pull it  
17 out? We wouldn't have to get -- we  
18 wouldn't have to get your whole master  
19 spreadsheet?

20 A. Yeah, I think so.

21 Q. Okay. Let's walk through a  
22 couple of things.

23 Would you say you're generally  
24 aware of the process that it takes to  
25 acquire, like, for a company like

1 DOUGLAS J. SMITH

2 StraightPath to acquire pre-IPO stock?

3 A. I don't -- I don't know, you  
4 know, the legal agreements between that  
5 and, you know -- I just don't know.

6 Q. Let me -- let me try to  
7 simplify.

8 Excluding the concept of legal  
9 agreements, I'm just -- the more of the  
10 kind of -- if you're a fund or trying to  
11 find stock, are you familiar with the  
12 process to go find and purchase stock,  
13 like what it takes to find stock?

14 A. Yes. You're trying to acquire  
15 shares.

16 Q. Right. But do you know -- are  
17 you familiar with what kind of work it  
18 takes to do that?

19 A. I don't know.

20 Q. You've never been part of that  
21 process at a company or otherwise, right?

22 A. No.

23 Q. And so we know -- these are  
24 all private companies, so none of this  
25 stock is publicly traded at this point,

1 DOUGLAS J. SMITH

2 right?

3 A. I think four or five went  
4 public.

5 Q. I'm sorry. I mean, sorry, when  
6 they're acquiring the stock, the  
7 offerings before they go public, all this  
8 is private stock that's going to be  
9 acquired by the fund, correct?

10 A. Correct.

11 Q. Okay. So are you familiar with  
12 the kind of -- have you ever been through  
13 the process or otherwise know what kind  
14 of volume a fund may have to purchase in  
15 order to have access to private stock?

16 A. I don't know.

17 Q. Do you have any sense or  
18 understanding of the -- of what brokers  
19 may charge, brokers may charge in finding  
20 stock for funds like StraightPath?

21 A. I don't know.

22 Q. Do you have any idea of what  
23 fees may be charged by the company that  
24 -- the pre-IPO company to transfer stock?

25 A. I don't know. All I know is

1 DOUGLAS J. SMITH

2 what I'm categorizing it in my bank  
3 analysis as it's happening. I just don't  
4 know the context underlying it.

5 Q. Do you have any knowledge  
6 about -- do you know what a forward  
7 contract is?

8 A. I don't know.

9 Q. Now, do you understand that  
10 generally the concept here is investors,  
11 at least are -- well, are investing in  
12 this private company with the hope the  
13 price they paid for it is less than what  
14 it is if they go public, correct?

15 A. Yes.

16 Q. Okay. Have you ever personally  
17 invested in anything like this?

18 A. No.

19 Q. Do you know anyone who has?

20 A. No.

21 Q. Okay. Now, you understand that  
22 companies, you know, many companies never  
23 go public, correct, private companies?

24 A. Yes.

25 Q. And some companies that do,

1 DOUGLAS J. SMITH

2 when they form, let's say a new company  
3 forms it could take many years for a new  
4 company to go public; do you understand  
5 that?

6 A. Yes.

7 Q. Now, earlier you talked about  
8 the concept of that you understood what 2  
9 and 20 meant, right?

10 A. Yes.

11 Q. Okay. So you know that  
12 managers can charge 2% -- sorry -- 2% of  
13 management fee of assets they're holding  
14 each year, correct?

15 A. I know that that's -- yes,  
16 that's an option that certain fund  
17 managers can do, yes.

18 Q. And you understand from  
19 looking at the welcome letters that  
20 StraightPath did not charge that, right?

21 A. I don't know yes or no whether  
22 StraightPath did that or not.

23 Q. Okay. Well, what I'm really  
24 referring to is you've seen no document  
25 that they charged a management fee,

1 DOUGLAS J. SMITH

2 correct?

3 A. I don't think so.

4 Q. Now, the welcome letters said  
5 they weren't charging a management fee,  
6 is that what you saw?

7 A. I think so.

8 Q. You think that they did or  
9 didn't?

10 A. I don't know. I would have to  
11 look at a welcome letter.

12 Q. Are you aware that -- whether  
13 StraightPath ever charged a due diligence  
14 fee to any of its investors?

15 A. No.

16 Q. How about expense fees?

17 A. I don't know.

18 Q. Performance bonus fees?

19 A. I don't know.

20 Q. Now, just to confirm, in your  
21 declaration you know that StraightPath  
22 paid finders out of the markup that it  
23 received, correct?

24 A. I don't think I --

25 MR. GREENWOOD: Objection to



1 DOUGLAS J. SMITH

2 form.

3 A. -- I say that.

4 Q. Let me ask you a different  
5 question.

6 Do you understand where the  
7 money came from to pay finders or  
8 broker-dealers their fee?

9 A. Yes, from the bank account  
10 records, it's either coming from the  
11 investors or the brokerage account.

12 Q. Okay. But as far as those  
13 fees, if they're coming out of the  
14 markup, the dollars from the markup that  
15 StraightPath takes in, did you analyze  
16 whether those fees that brokers were  
17 getting paid was coming out of the  
18 markup?

19 A. No.

20 Q. You didn't think it important  
21 to kind of assess how much money was  
22 going out from the markup?

23 MR. GREENWOOD: Objection to  
24 form.

25 A. Yes. And I would have done so

1 DOUGLAS J. SMITH

2 if all of the records were in one place,  
3 but they just weren't accounted for for  
4 every investor.

5 Q. So -- wait. But you spent a  
6 lot of time in your report, in your  
7 exhibits calculating markup, correct?

8 A. Yes.

9 Q. But there's no calculation you  
10 did to try to assess how much of that  
11 markup went to pay third-party fees in  
12 acquiring the stock, correct?

13 A. Correct. But I know where it  
14 would have come from.

15 Q. What does that mean?

16 A. So all of the inflows into the  
17 bank accounts are from investors or  
18 brokerage accounts.

19 Q. Right. But you focused very  
20 heavily -- you focused a good part of  
21 your brief on how high in your mind a  
22 percentage markup there was, correct?

23 A. Yes.

24 Q. But in the analysis you didn't  
25 focus at all on how much of that had to

1 DOUGLAS J. SMITH

2 go out to third parties to pay the fees  
3 it took to get the stock, did you?

4 MR. GREENWOOD: Objection to  
5 form.

6 A. I didn't find any records for  
7 all of the rows that accounted for fees.

8 Q. Wait. But you calculated how  
9 much went out to broker-dealers and  
10 finders?

11 A. Yes.

12 Q. So you know how much went to  
13 broker-dealers and finders. Although,  
14 you didn't provide the backup, you have a  
15 number of 48 million that went out to  
16 third parties?

17 A. Yes.

18 Q. Okay. So you have that number  
19 and you have this markup number, but did  
20 you ever take effort to tie the two to  
21 understand how much of that markup was  
22 being used to pay out these brokers?

23 A. Yes. As I said before, in my  
24 pivot tables you can see all inflows and  
25 outflows and if we do simple math we can

1 DOUGLAS J. SMITH

2 figure that out.

3 Q. But that's not in your  
4 declaration?

5 A. No.

6 Q. Let's go to paragraph 43 and  
7 44. Let me know when you're ready.

8 A. Yes. I'm ready.

9 Q. So you state --

10 MR. GREENWOOD: 43 or 44.

11 MR. SHERMAN: I'll start with  
12 43.

13 Q. Now, this is where it  
14 references the SP Fund Manager and SP  
15 Adviser charged investor markups the  
16 difference between the price the SP  
17 Manager paid for the pre-IPO shares and  
18 the price at which the SP Manager sold  
19 the corresponding Series Interest. Do you  
20 see that in 43?

21 A. Yes.

22 Q. Now, you state that  
23 StraightPath charged investors markups  
24 and that you calculated the average  
25 markup price?

1 DOUGLAS J. SMITH

2 A. Yes.

3 Q. You also state that you  
4 calculated not just the markup  
5 percentages but the average underlying  
6 sales price of the pre-IPO stock to  
7 investors, right? Do you want me to  
8 repeat that?

9 A. Yes.

10 Q. You also state that you  
11 calculated not just the markup percentage  
12 but the average underlying sales price of  
13 pre-IPO stock to an investor, right?

14 A. Yes.

15 Q. Did you do any analysis  
16 comparing the average sales price to  
17 investors and the market prices for which  
18 an investor could have purchased an  
19 interest in the same pre-IPO stock at the  
20 same time from a different fund?

21 A. No.

22 Q. Okay. So you have no idea  
23 whether or not what they were charging  
24 was market at the time?

25 A. I don't know.

1 DOUGLAS J. SMITH

2 Q. Okay. Just to confirm, you  
3 didn't do any market analysis at any  
4 point in time of what the prevailing  
5 market price was at the time StraightPath  
6 was selling stock to investors, right?

7 MR. GREENWOOD: Objection to  
8 form.

9 A. Yes.

10 Q. You did do a market analysis?

11 A. No, I did not.

12 Q. Do you know if anyone else at  
13 the SEC did that?

14 A. No.

15 Q. Now, did you do any analysis  
16 of how long StraightPath held stock that  
17 it sold to investors -- let me back up.  
18 Let me rephrase that.

19 We had talked earlier that  
20 there were times when StraightPath owned  
21 stock that it sold to investors. Do you  
22 remember that testimony?

23 MR. GREENWOOD: Objection to  
24 form.

25 A. I think so.

1 DOUGLAS J. SMITH

2 Q. Okay. Well, hold on. Okay. So  
3 I know that you're getting confused and I  
4 don't want to --

5 MR. GREENWOOD: Let the  
6 transcript speak for itself here,  
7 okay? If you want to recite the  
8 transcripts it obviously says what  
9 it says.

10 MR. SHERMAN: He's looking  
11 confused, that's all I'm saying.  
12 And he said "I think so", so I'm  
13 trying to help out and make sure we  
14 know where things are at so I can  
15 ask questions and he feels  
16 comfortable with what I'm asking.

17 Q. So previously we talked about,  
18 at least in your analysis, tell me if I'm  
19 mistaken, but my understanding from your  
20 prior testimony there was times where  
21 StraightPath had inventory of stock and  
22 sold it to investors, correct? We talked  
23 about that previously?

24 A. Yes. It depends on what they  
25 were looking at.

1 DOUGLAS J. SMITH

2 Q. I'm not talking holistic, I'm  
3 just talking over time.

4 So did you ever do an analysis  
5 of how long StraightPath held a stock in  
6 its own account before it sold?

7 MR. GREENWOOD: Objection to  
8 form.

9 A. So, again, you're talking  
10 about brokerage account records, when  
11 something goes IPO and they hold stock?  
12 That's the only way it would happen.

13 MR. GREENWOOD: You want to  
14 clarify what account you're talking  
15 about?

16 Q. Let me kind of back up.

17 So did you look at any  
18 purchase documents where StraightPath had  
19 purchased -- had purchased stock, I think  
20 it's in your declaration, like, the date  
21 that they purchased, you looked at some  
22 of that, right?

23 A. Yes.

24 Q. Okay. So and there's a point  
25 later in time where that stock was sold



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2 to investors?

3 A. Yes.

4 Q. So I'm asking, did you do any  
5 analysis comparing the market price at  
6 the time they bought the stock versus the  
7 time they sold the stock?

8 A. I mean, to come up with these  
9 markups here, you know, that's in my  
10 declaration, yes. So the markup  
11 percentages versus what they paid from a  
12 third party and what they sold to  
13 investors, I did that.

14 Q. Right.

15 A. I don't know if you're talking  
16 about market prices -- okay.

17 Q. Well, I'm just saying you  
18 understand that StraightPath is not the  
19 only fund out there that, since 2017, was  
20 selling interest in funds that connected  
21 to pre-IPO stock, right?

22 A. Yes.

23 Q. Okay. So I'm just saying that  
24 if StraightPath bought a stock at a  
25 particular price at one point and sold it

1 DOUGLAS J. SMITH

2 at another point, did you take any effort  
3 to look at what other people were selling  
4 the stock at to see if -- at all? Did you  
5 look at all what other people were  
6 selling that same stock at?

7 A. No.

8 Q. Okay. So you understand that  
9 when StraightPath buys stock that, at a  
10 certain price and hasn't sold it to  
11 investors, it carries market risk,  
12 correct?

13 A. Yes.

14 Q. Some investors may never want  
15 to buy the stock that it purchased,  
16 correct?

17 MR. GREENWOOD: Objection to  
18 form.

19 Q. Well, it's possible that an  
20 investor -- that they could find no one  
21 to purchase the stock that they acquired,  
22 correct?

23 A. It's possible, yes.

24 Q. Okay. And do you not agree  
25 that when StraightPath sells stock to

1 DOUGLAS J. SMITH

2 investors it has the right to sell it at  
3 a price that is -- let me strike that.

4 Do you agree or disagree that  
5 when StraightPath sells stock, that it  
6 should have the right to sell the stock  
7 at a reasonable market price that it  
8 deems appropriate?

9 MR. GREENWOOD: Objection to  
10 form.

11 A. Sure.

12 Q. Did you do an analysis at all  
13 of what costs may affect, like a markup,  
14 you know, where the markup comes from?

15 A. No.

16 Q. And also, as far as the markup  
17 goes, you did not do -- you didn't do an  
18 analysis, did you, to determine what, if  
19 any, portion of that markup StraightPath  
20 kept after it paid out its fees for any  
21 particular stock, correct?

22 MR. GREENWOOD: Objection to  
23 form.

24 A. So we know the analysis of the  
25 net inflows and outflows. We know how

1 DOUGLAS J. SMITH

2 much they paid finders and themselves  
3 versus what came in. So that's easily --  
4 we can easily calculate that.

5 Q. But just to be clear, you guys  
6 -- sorry -- the SEC presented your  
7 declaration which highly focuses on the  
8 percent of markup, right?

9 A. Yes.

10 Q. But it nowhere in the  
11 declaration or the exhibits does it show  
12 that what portion of the markup  
13 StraightPath actually kept after paying  
14 out fees, correct?

15 A. Well, there's only \$2 million  
16 left in the bank account. So all of  
17 the -- vast majority of the money that  
18 went out were attributed to markups.

19 Q. That's not my question. I'm  
20 asking, if you showed that there was a  
21 percentage in dollar figure of the  
22 markup, wouldn't you agree that it gives  
23 the impression in your declaration that  
24 StraightPath kept all of that money,  
25 correct?

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2 MR. GREENWOOD: Objection to  
3 form.

4 A. Yes.

5 Q. But that's not true, is it,  
6 sir?

7 A. No, it is true.

8 Q. That StraightPath kept the  
9 whole markup?

10 A. Yes.

11 Q. You didn't do an analysis of  
12 what money -- there's no analysis in your  
13 declaration showing that, of a markup for  
14 a particular stock, that they had to then  
15 pay -- StraightPath had to pay a broker,  
16 like, the -- I'm not talking about the  
17 back end. Let's just back up.

18 You buy stock, you know what  
19 the markup is, but you don't have  
20 anywhere in there showing that for a  
21 particular stock sale to an investor that  
22 some of that money went to pay for the  
23 people that found the stock?

24 MR. GREENWOOD: Are you asking  
25 in his declaration?

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2 MR. SHERMAN: In his  
3 declaration or in his exhibits.

4 Q. There's nothing that shows how  
5 much of that markup went to pay for those  
6 that found the stock, the broker fees,  
7 it's not in there, is it, sir?

8 A. I don't understand the  
9 question because I know how much came in  
10 from the brokerage accounts to sell stock  
11 of shares that have went IPO and what  
12 they did with it in the bank accounts.  
13 And on the other side, the vast majority  
14 of funds I can attribute investor funds  
15 coming in and over \$100 million going  
16 out.

17 Q. Okay. Let's back this up and  
18 make it simple.

19 You spent time in your  
20 declaration identifying how much of a  
21 percent markup StraightPath had on a  
22 particular stock from your calculation,  
23 correct?

24 A. Yes.

25 Q. But in that same declaration

1 DOUGLAS J. SMITH

2 you have no analysis in there or the  
3 exhibits showing how much of that markup  
4 actually had to go out to pay third  
5 parties who found the stock, like  
6 brokers, correct? There's no tie?

7 MR. GREENWOOD: Objection to  
8 form.

9 A. It's tied in the work that I  
10 did and it's something that I can do.

11 Q. But -- okay. Yes or no, there  
12 is nothing in the declaration or the  
13 exhibits to your declaration that show  
14 how much of the markup went to pay any  
15 third parties associated with acquiring  
16 the stock?

17 MR. GREENWOOD: Objection to  
18 form.

19 A. I don't understand. I would  
20 have to rereview everything.

21 Q. You'd have to rereview. Show  
22 me. I mean, the declaration you said you  
23 signed a week ago. Show me where you  
24 identify how much of the markup -- how  
25 much of the markup StraightPath kept and

1 DOUGLAS J. SMITH

2 where it went?

3 MR. GREENWOOD: That's not the  
4 same question you just asked. You  
5 can ask it but that's not quite the  
6 same question you just asked.

7 MR. SHERMAN: It's the same  
8 premise, that you chose certain  
9 things and ignored others.

10 Q. Let me ask you that question  
11 then so you can look at it.

12 There is nothing in here in  
13 your declaration or your exhibits showing  
14 how much StraightPath kept of the markup  
15 and how much went out to third parties,  
16 correct?

17 A. I don't think so, no.

18 Q. I know so. You said I don't  
19 think so. It's not in there, right?

20 A. Okay.

21 Q. I want you to agree with me.

22 MR. GREENWOOD: This is not  
23 your deposition. Okay.

24 MR. SHERMAN: Actually, it is  
25 in my deposition.



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2 MR. GREENWOOD: You're not  
3 giving answers to questions under  
4 oath.

5 MR. SHERMAN: He said "I think  
6 so". I'm just trying to make sure  
7 it's clear.

8 Q. It's not in there, right, sir?

9 A. I think you're correct, yes.

10 MR. SHERMAN: Let's take a  
11 five minute break and see where I'm  
12 at.

13 VIDEOGRAPHER: Stand by. Off  
14 the record 4:23 p.m. This is the  
15 end of Media Unit 4.

16 (Recess is taken.)

17 VIDEOGRAPHER: Going back on  
18 the record 4:38 p.m. This is the  
19 beginning of Media Unit 5. Okay.  
20 You may proceed.

21 Q. Mr. Smith, again, Scott  
22 Sherman. You understand that you're on  
23 the record -- sorry -- that you're under  
24 oath still?

25 A. Yes.

1 DOUGLAS J. SMITH

2 Q. Okay. Just so couple of  
3 cleanup questions on a couple of things.

4 At one point, if you can  
5 recall your testimony, you mentioned that  
6 there was over \$100 million going out. Do  
7 you remember that testimony?

8 A. I don't recall. I mean, I have  
9 all inflows and outflows of money and  
10 what you are referring to is the amounts  
11 going to the StraightPath employees and  
12 the finders.

13 Q. So let me just kind of -- if  
14 you bear with me. There was a point  
15 where I was asking: "There is nothing  
16 that shows how much of the markup went to  
17 pay for those that found the stock? The  
18 broker is not there." And you said, "I  
19 don't understand the question because I  
20 know how much came in from the brokerage  
21 accounts to sell stock of shares that  
22 went IPO and they did with it in the bank  
23 account. And the other side, the vast  
24 majority of funds I can attribute going  
25 in, and then over 100 million going out."

1 DOUGLAS J. SMITH

2 MR. GREENWOOD: He can't see  
3 the transcript, you're reading the  
4 transcript. Typically a court  
5 reporter would read back here.

6 MR. SHERMAN: That's fine. I  
7 was just trying to speed things  
8 along. That's fine. Do we have when  
9 that was, Josh?

10 (Pending question and answer  
11 is read back by the reporter.)

12 Q. Does that refresh your memory?

13 MR. GREENWOOD: Do you need it  
14 repeated?

15 THE WITNESS: No.

16 MR. SHERMAN: Wait. What are  
17 we doing?

18 MR. GREENWOOD: I just wanted  
19 to make sure he understood it and  
20 heard it before you ask your  
21 question.

22 Q. I was just trying to  
23 understand when you said "100 million  
24 going out" what you were referring to?

25 A. So the total amount of

1 DOUGLAS J. SMITH

2 markups, like the delta between what  
3 they're purchasing from third parties and  
4 what they're selling to investors, it's  
5 over \$100 million.

6 Q. Okay. Now, during your  
7 testimony you've referred a couple of  
8 times to Ponzi-like.

9 Can you tell me what you mean  
10 by Ponzi-like in your mind?

11 A. Yes. When you're paying an  
12 investor their money back with funds from  
13 a new investor coming in.

14 Q. But so to confirm, though, we  
15 talked earlier, you did not calculate  
16 whether the money in the fund that went  
17 out to -- wait. Repeat that again, so I  
18 understand what you are saying, your  
19 concept of Ponzi-like?

20 A. When you're paying old  
21 investors with new investor money.

22 Q. And are you referring when  
23 there was a refund to investors?

24 A. Yes, that's one instance of a  
25 Ponzi-like payment.

1 DOUGLAS J. SMITH

2 Q. Okay. So if, now, we talked  
3 earlier about the fact that there's cash  
4 in the fund accounts, bank accounts, that  
5 you did not calculate whether those were  
6 fees earned by StraightPath, do you  
7 remember that testimony?

8 MR. GREENWOOD: Objection to  
9 form.

10 A. I don't understand the  
11 question.

12 Q. Well, when you say that money  
13 from a bank account was from old  
14 investors going to new investors, you're  
15 making an assumption that that money, or  
16 in our example, the refund is still the  
17 old investor's money, correct?

18 A. So when I look at Ponzi-like  
19 payments, you have to look at the bank  
20 balance of accounts and you have to look  
21 at the specific time period when that --  
22 when that investor is getting their money  
23 back and how are they making that  
24 investment -- how are they paying the  
25 funds to that investor. And for some

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2 instances, for Ponzi-like payments, you  
3 use new investor money coming in. The  
4 only way to make that outgoing withdrawal  
5 to an investor is from the new money  
6 coming in, if you just look at the bank  
7 balances at a specific time.

8 Q. But let me ask you a question,  
9 we talked about this earlier, just to  
10 kind of touch base again on it, there's  
11 times where StraightPath had stock, it  
12 sold to investors and that money coming  
13 in to pay for the stock, once it came in,  
14 the investors got the stock and  
15 StraightPath got the money, the \$100 I  
16 was talking about earlier. Do you  
17 remember that?

18 A. Yes, generally.

19 Q. So if StraightPath takes in  
20 \$100 from selling stock it owns and then  
21 distributes that \$100 to a new investor,  
22 for a refund, they have every right to  
23 distribute it, don't they?

24 A. I don't know.

25 Q. Well, you're the one that used

1 DOUGLAS J. SMITH

2 Ponzi-like but you don't know if they can  
3 use their own money to distribute to new  
4 investors?

5 A. So I'm describing what  
6 Ponzi-like behavior is, is when you pay  
7 out old investors with new investor  
8 money. And the way to do that is to look  
9 at the bank accounts on specific dates  
10 and periods of time.

11 Q. Just so I understand, you're  
12 looking at simple math, simply bank  
13 accounts, dollars going in and out.

14 A. Yes.

15 Q. So the fact that money comes  
16 in and then goes out, that's -- that  
17 happens every day in bank accounts,  
18 correct?

19 A. Yes.

20 Q. But you're making an  
21 insinuation that because money came in  
22 and then went out to an investor, in this  
23 example a refund, the only answer is that  
24 it has to be a Ponzi-like payment?

25 MR. GREENWOOD: Objection to

1 DOUGLAS J. SMITH

2 form.

3 A. Yes. The only way for that  
4 investor to get their money back is from  
5 new investor money coming in.

6 Q. Unless that money is no longer  
7 the investor's that came in because it  
8 was used to purchase stock, correct?

9 MR. GREENWOOD: Objection to  
10 form.

11 A. I guess.

12 Q. So there's lots of reasons  
13 that money that comes in, and legitimate  
14 reasons that money that comes into a bank  
15 account can be used to pay a refund,  
16 correct?

17 A. In Ponzi-like payments it's  
18 very clear that there's no money in the  
19 account and the person cannot be paid out  
20 with new investor money coming in.  
21 That's solely what I'm talking about.

22 Q. But just to be clear, you're  
23 making the assumption in your mind that  
24 that new money, once it comes in, is  
25 still the investor's money, correct?



1 DOUGLAS J. SMITH

2 MR. GREENWOOD: Objection to  
3 form.

4 A. It's still the new investor's  
5 money.

6 Q. But if the investor was  
7 putting we'll say the \$100 in to pay for  
8 stock from StraightPath, then now that  
9 \$100 isn't investor's money, is it?

10 A. In the example I'm using, they  
11 don't have that scenario. That's not  
12 happening in my example.

13 Q. And that's because you solely  
14 looked at bank records and see that there  
15 is only so much money in the account, so  
16 you're making the determination that  
17 because there is only so much money in  
18 the account that it has to be a  
19 Ponzi-like payment, correct?

20 MR. GREENWOOD: Objection to  
21 form.

22 A. Correct.

23 Q. That new investor money that  
24 came in, do you know why it came in?

25 A. Yes. They're purchasing shares

1 DOUGLAS J. SMITH

2 in the pre-IPO company.

3 Q. And if there is a surplus when  
4 the money comes in, then that stock that  
5 they were buying is going to the investor  
6 fund and that money is going to  
7 StraightPath, correct?

8 A. Not on the date in question.  
9 It's going to pay off the old investor,  
10 it's not being -- those new funds are not  
11 being made to purchase shares, they're  
12 being made to purchase old investors.

13 Q. You're missing the question.  
14 There is points that we've -- we're not  
15 saying -- StraightPath doesn't have to go  
16 and buy the stock because, as we've  
17 discussed earlier, StraightPath already  
18 has inventory.

19 A. I don't know. I would have to  
20 look on a case-by-case basis at a  
21 specific time period.

22 Q. Right. And so instead what you  
23 did is you determined that every time  
24 that money went in and went out it has to  
25 be a Ponzi-like payment?

1 DOUGLAS J. SMITH

2 MR. GREENWOOD: No. Objection  
3 to form.

4 A. In the instances that I have,  
5 it's Ponzi-like behavior.

6 Q. Right. Because it couldn't be  
7 something where money was just being used  
8 that was StraightPath's to pay, it would  
9 have to something that's Ponzi-like,  
10 otherwise, there wouldn't be a basis to  
11 make your claims here, correct?

12 MR. GREENWOOD: Objection to  
13 form.

14 A. I don't know.

15 Q. It's important to kind of  
16 know, though, right? If there is not, as  
17 you say, Ponzi-like behavior and it's a  
18 legitimate use of funds, that creates a  
19 problem for the SEC's case here, correct?

20 MR. GREENWOOD: Objection to  
21 form.

22 A. I don't think -- I don't know  
23 either way.

24 Q. Bottom line let's ask this; if  
25 the money comes in and StraightPath had

1 DOUGLAS J. SMITH

2 inventory and that money came in, and  
3 StraightPath had the stock in surplus, it  
4 would have every right to take that \$100  
5 and use it however it saw fit, correct?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. I don't know.

9 Q. You don't know if StraightPath  
10 has the right to use its own money how it  
11 sees fit?

12 A. I don't know.

13 Q. Okay. Question just going  
14 back, remember we talked about the 411  
15 million?

16 A. Yes.

17 Q. Did that account for the fees  
18 paid to broker-dealers and finders, that  
19 48 million?

20 A. No.

21 Q. So that 48 million is above  
22 the 411?

23 A. Yes.

24 MR. GREENWOOD: Objection to  
25 form.

1 DOUGLAS J. SMITH

2 A. I stripped out all of the fees  
3 they paid to registered broker-dealers.  
4 So in the welcome letters they described  
5 a portion of fees that they're taking out  
6 from the investment and the shares times  
7 the price is the amount less the fees.

8 MR. GREENWOOD: Are you guys  
9 talking past each other? He's  
10 asking about the amounts raised --

11 MR. SHERMAN: I'm sorry.

12 MR. GREENWOOD: Just to be  
13 clear, the 411 million you are  
14 referring to?

15 MR. SHERMAN: Let me back up.  
16 I'd rather you not testify.

17 Q. Okay. Let's backup. In the  
18 report you talked about \$411 million  
19 being raised, correct?

20 A. Yes.

21 Q. And so what I was trying to  
22 say is, like, is the 411 million, do you  
23 subtract the broker-dealer and finder  
24 fees or is that on top of?

25 A. I don't subtract the money

1 DOUGLAS J. SMITH

2 coming in. I mean, I guess I'm getting  
3 kind of confused.

4 Q. Let me ask you a different  
5 way.

6 The 411 million was raised,  
7 that's from investors, roughly?

8 A. The share price equals the  
9 dollar amount, you know, that they sold  
10 to investors, that 411 million represents  
11 the shares times the price.

12 Q. Okay. So you had separately  
13 referenced that \$48 million went out to  
14 broker-dealers and finders, correct?

15 A. Yes.

16 Q. So if there is 411 million  
17 raised, do we -- does that include any  
18 monies paid out to broker-dealers or  
19 finders?

20 A. No.

21 Q. For example -- okay. So you're  
22 saying there was an additional \$48  
23 million raised that went out?

24 A. No.

25 Q. So of the 411, 48 million was

1 DOUGLAS J. SMITH

2 used to pay broker-dealers and finders?

3 A. I don't -- I don't know. All I  
4 know is investors coming into the bank  
5 accounts, what they purchased, their  
6 shares and the price and what went out  
7 the door, what is the outflow.

8 Q. And the inflow was 411, right?

9 A. Yes.

10 Q. Okay. So, therefore, that  
11 would be the money coming in. So after  
12 that money comes in there's payments out  
13 so broker-dealers and finders would have  
14 been paid out of, I guess, that 411,  
15 correct?

16 A. I assume so, yes. But there's  
17 also money coming in from the brokerage  
18 accounts as well that could be, you know,  
19 they're getting paid from that as well, I  
20 don't know.

21 Q. Okay. And the 411 would be  
22 used to pay, on the purchase side, like,  
23 the commissions to buy the stock, right,  
24 like, transfer fees and all?

25 A. That would be the -- the

1 DOUGLAS J. SMITH

2 amount that StraightPath is sending to  
3 third parties, they have fees associated  
4 with those transactions. They're not  
5 associated with the investors money.

6 Q. So let me ask you this, in  
7 prior testimony you had said the markup  
8 was net of fees to finders. Do you  
9 remember that testimony?

10 A. No.

11 Q. So let me ask you, am I  
12 remembering that correctly, was the  
13 markup like a gross markup that you had  
14 or after finders were paid?

15 A. So I'm stripping out all the  
16 fees. Like, I'm not accounting for -- I'm  
17 giving StraightPath a credit for what  
18 they paid, you know, to acquire the  
19 shares and then on the flip side for the  
20 investors, you know, if it's in the  
21 welcome letters, they're paying for the  
22 specific registered brokers those fees,  
23 that's stripped out.

24 Q. So let me you ask you this,  
25 where it says on tab 8, where you have --



1 DOUGLAS J. SMITH

2 sorry -- I'm in Exhibit 8 to your  
3 document.

4 A. Yes.

5 Q. You have average markups?

6 A. Yes.

7 Q. Weighted average cost basis.

8 Can you explain what that means?

9 A. Right. So StraightPath is  
10 purchasing shares throughout time at  
11 different quantities and different  
12 prices, and in order to weight them all  
13 in the same way you multiply by the  
14 shares times the price and add up each  
15 instance where they're making the  
16 purchases, divided by the total amount of  
17 shares, which gets you to the average  
18 price.

19 Q. So when we say the purchase  
20 price is 17.12, that's what StraightPath  
21 purchased the stock at on an average  
22 basis, correct?

23 A. Yes.

24 Q. Like an average of their  
25 purchase price for 23andMe was \$17.12,

1 DOUGLAS J. SMITH

2 right?

3 A. Correct.

4 Q. And the average price they  
5 sold it to investors was \$23.65 is what  
6 you're saying, correct?

7 A. Yes.

8 Q. And so just to be clear,  
9 there's a markup between 17 and 23, which  
10 you say -- I trust the math -- but you  
11 say is 38%, correct?

12 A. Yes.

13 Q. So from that 23.65, they have  
14 a delta between the 23 and the 17,  
15 correct?

16 A. Yes.

17 Q. And from that delta money  
18 comes out to pay for the cost of getting  
19 the stock, like, the brokers who found  
20 the stock, correct?

21 A. I don't know.

22 Q. Because you didn't do that  
23 analysis, correct?

24 A. I stripped out all the fees so  
25 they don't apply in this situation.

1 DOUGLAS J. SMITH

2 Q. Well, when you say you strip  
3 -- sorry. Go ahead. I apologize.

4 A. I'm just looking at shares  
5 that were bought and sold and the price  
6 that they were bought and sold with.

7 Q. Okay. But --

8 A. I'm removing the fees.

9 Q. -- when you say "removing the  
10 fees", are you telling me when you say  
11 \$23.65, that's not the actual share price  
12 that an investor bought at?

13 A. It is. These are the exact  
14 share prices that they're buying and  
15 selling from.

16 Q. Okay. So you understand that  
17 the difference between the purchase and  
18 the sale price is a markup, but some of  
19 that money that comes in and the markup  
20 goes to pay the brokers to cover their  
21 fees to buy the stock?

22 MR. GREENWOOD: Objection to  
23 form.

24 A. Those are separate fees that  
25 aren't related to the share price.

1 DOUGLAS J. SMITH

2 Q. How can you say that? Back up.

3 You're saying -- the whole  
4 concept of a markup, sir, do you not  
5 understand that StraightPath is  
6 accounting for the fees it has to incur  
7 to acquire the stock?

8 MR. GREENWOOD: Objection to  
9 form.

10 A. Right. Those are separate  
11 funds that they're spending to purchase  
12 the shares that aren't reflected in the  
13 share price. So when you look at --

14 Q. Go ahead. Go ahead.

15 A. -- when you look at share  
16 purpose agreements, there is the share  
17 price and a quantity amount, and that  
18 amount equals, you know, what they're  
19 sending out the door. Anything extra  
20 represents fees.

21 Q. You're talking about bank  
22 statements and you've segregated out  
23 fees, correct?

24 A. Yes.

25 Q. What I'm talking about is when

1 DOUGLAS J. SMITH

2 -- what you can't see in the bank  
3 statements because that's all you looked  
4 at, which is when StraightPath purchases  
5 stock and then figures out what the sale  
6 price is, in addition to looking at the  
7 market, it actually calculates out how  
8 much it's going to cost to buy the stock.  
9 Are you aware of that?

10 MR. GREENWOOD: Objection to  
11 form, foundation.

12 A. I don't know.

13 Q. Well, did you ever do any  
14 analysis to determine why StraightPath  
15 would charge \$23.65 on average for  
16 23andMe?

17 A. No.

18 Q. You don't think that's kind of  
19 important when you're talking about  
20 markups and trying to use that as a basis  
21 to say that StraightPath charged some  
22 improper markup?

23 MR. GREENWOOD: Scott,  
24 objection to form.

25 A. I don't know.

1 DOUGLAS J. SMITH

2 MR. SHERMAN: I know we're  
3 kind of mix and match, here but  
4 before I get to my last part, can  
5 we just have five minutes? There  
6 is one last part I got to go after  
7 what I think we're going to look  
8 at.

9 Actually, let me finish one  
10 thing before I forget.

11 Q. Now, one thing that you  
12 articulated in your declaration on  
13 markups, just to kind of cover that real  
14 quick, you said the markups went up as  
15 deficits increased, correct?

16 A. Where are you looking?

17 MR. SHERMAN: Josh, do you  
18 know which part? Are you looking --

19 MR. LEWIN: Yes. Give me one  
20 second. At paragraph 47.

21 Q. So on paragraph 47 you make  
22 the statement "In 2021" -- sorry. I  
23 should have put this on mute. (Telephone  
24 rings).

25 You say, "In 2021 as the SP

1 DOUGLAS J. SMITH

2 Fund faced share deficits across multiple  
3 series these markups increased as did the  
4 payments to founders." Do you see that?

5 A. Yes.

6 Q. So now in 2021, because I  
7 think I'm restating but I want to make  
8 clear, you didn't do any analysis of what  
9 was happening in the market in 2021 as  
10 far as, you know, at times dramatic  
11 increases in prices for stock, did you?

12 A. No.

13 Q. But you're making -- did you  
14 write this sentence?

15 A. No.

16 Q. Okay. That's right. You didn't  
17 write any of it.

18 But what this sentence is  
19 trying to insinuate is that in 2021  
20 markups increased because deficits  
21 increased, that's what this is trying to  
22 say, correct?

23 MR. GREENWOOD: Objection to  
24 form.

25 A. They occurred in tandem.

1 DOUGLAS J. SMITH

2 Q. But the reason for this is to  
3 try to insinuate there is something  
4 nefarious about markups increasing in  
5 2001, correct?

6 MR. GREENWOOD: Objection to  
7 form.

8 A. I don't know.

9 Q. Well, you wrote -- you  
10 attested that this is your statement, so  
11 you don't know why it's in there?

12 MR. GREENWOOD: Objection to  
13 form. It's not what he said.

14 Q. Do you know why it's in there?

15 A. It's a true statement. I don't  
16 know.

17 Q. But nothing in here assessing  
18 that, quite frankly, markup increases  
19 pricing -- well, we'll say prices for  
20 stock was higher in 2021 because the  
21 market prices were higher for the stock,  
22 that could be equally true as to why the  
23 prices for the stock went up, correct,  
24 sir?

25 A. It could be.



1 DOUGLAS J. SMITH

2 MR. SHERMAN: Let's take a few  
3 minutes. I just want to see if  
4 we're going to do this other thing  
5 on some docs and then I just have  
6 one last group and then we'll be  
7 done-ish. Okay? Five minutes.

8 VIDEOGRAPHER: Stand by. Off  
9 the record 5:05 p.m.

10 (Recess is taken.)

11 VIDEOGRAPHER: Back on the  
12 record 5:13 p.m. Okay. You may  
13 proceed.

14 Q. Just a little bit more and I  
15 appreciate your time today.

16 Again, Mr. Smith, Scott  
17 Sherman here. You understand you're under  
18 oath, correct?

19 A. Yes.

20 Q. Okay. Good.

21 MR. SHERMAN: Josh, can you  
22 pull up --

23 Q. First of all, let's go back to  
24 your declaration at page 25.

25 A. Page 25 or paragraph 25?

1 DOUGLAS J. SMITH

2 Q. Sorry. Page 25. So just to be  
3 clear, it says, "With respect to the  
4 pre-IPO company" -- sorry. I'll just  
5 read it.

6 "With respect to the pre-IPO  
7 company UiPath between February 2nd, 2021  
8 and March 8th, 2021 the SP Fund Manager  
9 sold more than 25.5 million in Series  
10 Interests in its pre-IPO shares. The SP  
11 Fund Manager, however, never paid for  
12 UiPath pre-IPO shares at all. Ultimately  
13 more than 17.5 million of these  
14 investments were moved over to series  
15 investments and other pre-IPO shares and  
16 the SP Fund Manager refunded more than 8  
17 million to investors who did not wish to  
18 do so." Do you see that?

19 A. Yes.

20 Q. And as we discussed  
21 previously, basically, you accounted for  
22 the money coming in, roughly 25.5  
23 million, and accounted for all the money  
24 being either refunded or folks getting  
25 the funds put into other investments,

1 DOUGLAS J. SMITH

2 correct?

3 A. Yes.

4 MR. SHERMAN: Josh, can you  
5 pull up the memorandum of law? This  
6 is going to be page 14.

7 Q. Let me know when you see it.  
8 You have to refresh. This is the  
9 Plaintiff's Securities and Exchange  
10 Commission's memorandum of law in support  
11 of its emergency application for an order  
12 to show cause, temporary restraining  
13 order, preliminary injunction, asset  
14 freeze receiver and other relief. Do you  
15 see that, sir?

16 A. Yes.

17 MR. SHERMAN: I was reading  
18 the beginning, but I'm going to  
19 page 14.

20 MR. GREENWOOD: Page 14 or 14  
21 on the top?

22 MR. SHERMAN: Good question.  
23 Hold on. Josh, do you know where it  
24 is, actually, the pdf 14?

25 MR. GREENWOOD: I think it's

1 DOUGLAS J. SMITH

2 on pdf page 14, printed page 8.

3 MR. SHERMAN: Josh, are you  
4 there?

5 MR. LEWIN: Yes. Yes. I think  
6 that's right.

7 Q. All right. Hold on a second.  
8 So this paragraph starts off and says --  
9 this is at the bottom of page 8. Let me  
10 know when you're there.

11 A. Yes.

12 Q. So it says, "The SP Fund  
13 Manager has operated at pre-IPO share  
14 deficit for years." Do you see that,  
15 beginning of that sentence?

16 A. Yes.

17 Q. Now, just kind of walking down  
18 a bit, do you see where it says, "When  
19 the SP Fund Manager", it's like after the  
20 Exhibit 24 at 9, at it's like four  
21 sentences from the end?

22 A. Yes.

23 Q. So this says, "When the SP  
24 Fund Manager was finally forced to admit  
25 that it could not acquire the UiPath

1 DOUGLAS J. SMITH  
2 pre-IPO shares that it had promised,  
3 Martinsen, Castillero and Lanaia urged  
4 their sales agents to convince these  
5 investors to move their investments to  
6 other pre-IPO companies." Do you see  
7 that?

8 A. Yes.

9 Q. Guess what, you are the sole  
10 source of that statement, Smith  
11 declaration at 25.

12 Now, just to confirm, we can  
13 look back at 25, but that statement about  
14 being forced to admit and convincing  
15 investors, none of that is in your  
16 declaration, correct?

17 MR. GREENWOOD: Objection to  
18 form.

19 A. Well --

20 MR. SHERMAN: I'm just asking.  
21 What's the objection for?

22 MR. GREENWOOD: Are you asking  
23 him to interpret whether the words  
24 are not in the document?

25 MR. SHERMAN: I'm asking --

1 DOUGLAS J. SMITH

2 Q. Well, reading this and reading  
3 your declaration paragraph 25, is what's  
4 stated here that's cited for you in your  
5 declaration?

6 A. I'm just -- in my declaration  
7 I'm looking at all inflows and outflows  
8 of bank statements, so that's what my  
9 paragraph 25 is saying.

10 Q. Right. So just to make sure,  
11 when it says, "The SP Fund Manager was  
12 finally forced to admit that it could not  
13 acquire the UiPath pre-IPO", you have no  
14 knowledge about whether the SP Manager  
15 was forced to or did anything in  
16 connection with anybody; is that true?

17 A. I don't know about the word  
18 "forced" but I did see, you know, certain  
19 text messages where they're, you know,  
20 trying to purchase the shares and they  
21 don't -- the deal fell through and then  
22 they have to, you know, ask investors; do  
23 you want your money back or do you want  
24 to do another pre-IPO company?

25 So I know generally what

1 DOUGLAS J. SMITH

2 happened, I don't know the specifics.

3 Q. Okay. So you didn't write this  
4 in your declaration that they were forced  
5 to admit that they could not acquire the  
6 stock, correct?

7 A. Correct.

8 Q. That's not your words?

9 A. Correct.

10 Q. And where it says that,  
11 "Martinsen, Castillero and Lanaia urged  
12 their sales agents to convince  
13 investors", do you have any personal  
14 knowledge of whether either of these  
15 people urged their sales agents to  
16 convince investors?

17 A. Again, I do remember seeing  
18 texts and chats where they were going to,  
19 you know, tell their salesforce to reach  
20 out to investors and to see, you know,  
21 what they wanted to do.

22 Q. Right. Which is to tell their  
23 sales -- so another plausible, from what  
24 you saw in the text, is that they tried  
25 to buy UiPath, it fell through, and that

1 DOUGLAS J. SMITH

2 they told their salesforce about it so  
3 that they could ask investors what they  
4 wanted to do, correct?

5 MR. GREENWOOD: Objection to  
6 form.

7 A. Yeah. I mean, that's possible.  
8 Yes.

9 Q. So this concept of urged and  
10 convincing investors to move their  
11 investments, you have no knowledge about  
12 anyone urging or convincing investors to  
13 do anything related to UiPath; isn't that  
14 true?

15 MR. GREENWOOD: Objection to  
16 form.

17 A. I don't know.

18 Q. You have no knowledge -- do  
19 you have any knowledge about Lanaia or  
20 Martinsen or Castillero urging investors  
21 or convincing -- urging investors to move  
22 their investments? Do you have any  
23 knowledge about that?

24 A. I don't know.

25 Q. You don't know or you don't



1 DOUGLAS J. SMITH

2 have any knowledge? You don't know if you  
3 have knowledge?

4 A. I don't know. I would have to  
5 look at what was produced and what was  
6 discussed at the time. I've looked at a  
7 lot of different documents.

8 Q. But nothing in your  
9 declaration paragraph 25 says anything  
10 about convincing investors to move their  
11 investments, does it?

12 A. Correct.

13 MR. SHERMAN: Okay. So because  
14 of the outstanding issues related  
15 to a number of your work product  
16 documents -- sorry. Let me  
17 rephrase -- a number of your  
18 documents that your counsel has  
19 identified as work product, which  
20 we dispute, including key documents  
21 we need to see, we need to reserve  
22 our rights to potentially call you  
23 back to ask additional questions.

24 So at this point we'll hold  
25 the record open, but I have no

1 DOUGLAS J. SMITH

2 further questions at this time. And  
3 I appreciate your time today.

4 MR. GREENWOOD: Well, I guess  
5 the SEC would like to ask a few  
6 questions. If we can just take  
7 maybe five minutes and come back?

8 MR. SHERMAN: Sure. And then  
9 I'll just reserve if I have any  
10 other questions, depending on what  
11 you ask.

12 VIDEOGRAPHER: Off the record  
13 at 5:23 p.m.

14 (Recess is taken.)

15 VIDEOGRAPHER: Back on the  
16 record 5:28 p.m. Okay. You may  
17 proceed.

18 CROSS-EXAMINATION BY MR. SHERMAN:

19 Q. Good afternoon, Mr. Smith. My  
20 name is Lee Greenwood from the SEC. I  
21 just have a couple of questions following  
22 up for you.

23 You were asked during  
24 Mr. Sherman's examination about the  
25 documents you reviewed during the course

1 DOUGLAS J. SMITH

2 of this case.

3 When did you start working on  
4 this case?

5 A. I was assigned it in July of  
6 last year and I started working on it in  
7 August of last year.

8 Q. Between August of 2021 and May  
9 of 2022 how many documents have you  
10 reviewed in connection with this case?

11 A. A lot.

12 Q. When you say "a lot", can you  
13 quantify that?

14 A. There's -- I mean, there's  
15 15,000-plus rows of bank records and  
16 associated with that you have to look at  
17 multiple different data points or shares  
18 and price and what's coming in and coming  
19 out.

20 Q. Sitting here today, do you  
21 recall every single document that you  
22 reviewed in connection with this case?

23 A. No.

24 Q. If you were shown a document  
25 that you had reviewed previously would

1 DOUGLAS J. SMITH

2 that refresh your recollection?

3 A. Yes.

4 Q. You were asked some questions  
5 by Mr. Sherman about how long your  
6 analysis of bank records and specifically  
7 share deficits took. Why did that --  
8 well, do you remember those questions?

9 A. Yes.

10 Q. And approximately how long did  
11 that analysis take?

12 A. It took, from the beginning  
13 that I started on the case, it took that  
14 long up until, you know, sometime in May.

15 Q. Why did it take that long?

16 A. There were so many records and  
17 we only started getting records from  
18 Signature Bank from 2021 onwards, in  
19 January 2022 and February or March 2022.  
20 So it was just entering -- sorry.

21 Q. Continue.

22 A. -- and just entering that into  
23 Excel and finding all points and  
24 characterizing all inflows and outflows  
25 takes an enormous amount of time and

1 DOUGLAS J. SMITH

2 work.

3 Q. And can you describe the steps  
4 that you took to identify a particular  
5 inflow or outflow in the bank record?

6 A. It's just looking at, you  
7 know, funds coming into the account and  
8 funds leaving the account and, you know,  
9 associating them with, you know; are they  
10 investor; is it coming from the brokerage  
11 accounts; is it coming from somewhere  
12 else; and then where is it going to?

13 Q. How did you -- how did you  
14 make those determinations?

15 A. By looking at documents that  
16 StraightPath produced.

17 Q. You were asked some questions  
18 I think about Exhibit 10 to your report,  
19 which is marked as Defendant's Exhibit 1.  
20 Please turn to that. I think it's in  
21 front of you or nearby.

22 Do you have that in front of  
23 you?

24 A. Yes.

25 Q. What information is contained

1 DOUGLAS J. SMITH

2 in Exhibit 10?

3 A. This represents funds that are  
4 being sent to third parties to purchase  
5 pre-IPO shares.

6 Q. Do you know whether  
7 StraightPath acquired pre-IPO shares in  
8 all of the instances identified in this  
9 chart?

10 A. I know that funds are leaving  
11 the account and there are purchased  
12 shares in pre-IPO companies.

13 Q. Did you ever verify, yourself,  
14 that the shares exist?

15 A. No.

16 Q. Do you have a sense, sitting  
17 here today, of the liabilities of the  
18 StraightPath and investor entities,  
19 including the SP Funds?

20 MR. SHERMAN: Objection to  
21 form.

22 A. I guess I don't understand the  
23 question.

24 Q. Okay. Do you know how much  
25 StraightPath has sold to investors in

1 DOUGLAS J. SMITH

2 interests in funds?

3 MR. SHERMAN: Objection to  
4 form.

5 A. Yes. I know all inflows that  
6 are coming from investors to purchase  
7 specific shares.

8 Q. And how much did those inflows  
9 total, based on your analysis?

10 A. I think it's in Exhibit 1,  
11 which is over \$411 million.

12 Q. You were asked some questions  
13 about beneficial ownership by  
14 Mr. Sherman. Do you remember those  
15 questions?

16 A. I think so.

17 Q. Did you conduct any analysis  
18 of the amounts paid by StraightPath to  
19 the individual Defendants in this case?

20 A. Could you repeat the question?

21 Q. Did you conduct any analysis  
22 of the amounts paid by StraightPath to  
23 the individual Defendants in this case?

24 A. Yes.

25 Q. And will you look at Exhibit 6

1 DOUGLAS J. SMITH

2 and 7 of your report, which I don't think  
3 you were asked about earlier?

4 Do you identify how much was  
5 paid to each of the individual Defendants  
6 based on the bank accounts that you  
7 reviewed?

8 A. Yes.

9 Q. And what did you determine?

10 A. A total of 75 million was paid  
11 to those four individuals throughout  
12 time.

13 Q. How much was paid to each of  
14 the individual Defendants?

15 A. Over 25 million for Martinsen,  
16 over 24 million for Castillero, Lanaia  
17 and just under 100 million to Lachow.

18 Q. Did you say 100 million?

19 A. One million, sorry.

20 Q. So the record is clear, how  
21 much did you calculate was paid to  
22 Mr. Lachow by the StraightPath entities?

23 A. Just under a million dollars.

24 MR. GREENWOOD: So the SEC has  
25 no further questions at this time.



1 DOUGLAS J. SMITH

2 We just request under Rule 30(e)  
3 the right to review and sign the  
4 transcript.

5 MR. SHERMAN: So in light --  
6 just to be clear, in light of  
7 timing we're going to be getting  
8 the transcript tonight because we  
9 have to -- we have our brief due  
10 tomorrow, we'll be utilizing that.  
11 And so in light of the expedited  
12 nature we will need you to do that  
13 tonight because we've got to be  
14 able to utilize this for our brief  
15 tomorrow.

16 MR. GREENWOOD: As soon as you  
17 provide it to us, we will conduct a  
18 review as necessary. But we're  
19 requesting under Rule 30(e) to  
20 review and sign.

21 MR. SHERMAN: Either way, I'm  
22 explaining, it will come to you as  
23 quickly as we get, you will have it  
24 and I will need you to promptly  
25 finalize because we have to use it

1 DOUGLAS J. SMITH

2 for our brief tomorrow under the  
3 schedule court set in light of your  
4 demand for expedited discovery.

5 MR. GREENWOOD: Okay. We  
6 understand.

7 MR. SHERMAN: We'll get that  
8 to you. And then, we can go off the  
9 record just to clean up.

10 VIDEOGRAPHER: Are we finished  
11 with the deposition?

12 MR. SHERMAN: It's going to  
13 stay open for reasons I  
14 articulated, but we're finished for  
15 today.

16 VIDEOGRAPHER: Okay. Finished  
17 for today. Stand by.

18 Going off the record 5:36 p.m.  
19 This concludes today's portion of  
20 the deposition of Douglas J. Smith.  
21 There are five Media Units and they  
22 will be retained by Veritext. And  
23 we are off the record.

24 (The proceedings were  
25 adjourned at 5:36 p.m.)

## C E R T I F I C A T E

I, MAUREEN M. RATTO, a  
Registered Professional Reporter, do  
hereby certify that prior to the  
commencement of the examination,  
DOUGLAS J. SMITH was sworn by me to  
testify the truth, the whole truth and  
nothing but the truth.

I DO FURTHER CERTIFY that the  
foregoing is a true and accurate  
transcript of the proceedings as taken  
stenographically by and before me at  
the time, place and on the date  
hereinbefore set forth.

I DO FURTHER CERTIFY that I am  
neither a relative nor employee nor  
attorney nor counsel of any of the  
parties to this action, and that I am  
neither a relative nor employee of such  
attorney or counsel, and that I am not  
financially inte



-----  
MAUREEN M. RATTO, RPR

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Defendant's Exhibit 3, SP Venture Partners Delaware filing dated February 12, 2019, Bates SVP000015,	112
Defendant's Exhibit 4, excerpt of Use of Proceeds, Bates SPVP-SEC-053939,	120
Defendant's Exhibit 5, email dated March 30, 2022, re: Rubrik Acquisition,	191
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J U R A T

I do hereby certify that I  
have read the foregoing transcript of  
my deposition.

-----  
DOUGLAS J. SMITH

Sworn and subscribed  
before me  
this \_\_\_\_ day of  
\_\_\_\_, 2022

-----  
a Notary Public of  
the State of -----

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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